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Supreme Court, U.S.
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No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 2008

ROBERT L. SCHULZ, et al.,

Petitioners,

- against -

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this Court, by sanctioning a summary judgment that was granted without a trial, where there are facts material to the case that were in genuine dispute.

2. Whether the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

3. Whether Rule 41(c) of the Federal Rules of Appellate Procedure provides an automatic stay of the enforcement of an opinion and order of a Court of Appeals, until such time as that Court issues the Mandate.

4. Whether the free public distribution of copies of a Petition to the Government for Redress of Grievances, which the Government refused to respond to, and which speech neither advocates nor incites lawless behavior, imminent or otherwise, is protected from retaliation by the Speech, Assembly and Petition clauses of the First Amendment and by the Ninth Amendment to the United States Constitution.

PARTIES

(A) Parties Before The District Court:

The caption contains the names of all the parties.

There were no Intervenors or Amici before the District Court.

(B) Parties In The United States Court of Appeals for the Second Circuit:

The caption contains the names of all the parties.

There were no Intervenors and one Amici before the Circuit Court: Thurston Paul Bell, 121 Manor Way, Apartment H, Louisville, TN 37777.

(C) Parties In The Petition for Writ of Certiorari to the United States Supreme Court:

The caption contains the names of all the parties.

With regard to the two corporate Defendants, the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc., both are not- for- profit corporations, neither has a parent company and neither has issued any stock.

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The Opinion of the Court of Appeals, dated February 22, 2008, affirming summary judgment is reported as United States v. Schulz, et al., 517 F.3d 606 (2nd Cir. 2008) and appears in Appendix A to this Petition.

The Decision and Order of the District Court for the Northern District of New York, dated August 9, 2007, granting summary judgment is reported as United States v. Schulz, et al., 529 F. Supp. 2d 341, and appears as Appendix B to this Petition.

The unpublished Order of the Court of Appeals, dated June 2, 2008, denying motion to vacate Contempt Order appears in Appendix C to this Petition.

The unpublished written opinion of the Northern District of New York, dated April 28, 2008, granting motion for contempt appears in Appendix D to this Petition.

The unpublished Orders of the Court of Appeals, dated June 9, 2008 and August 7, 2008, denying rehearing appears in Appendix E and Appendix F to this Petition.

The unpublished Order of the District Court, dated July 25, 2007, denying leave to file a Sur-Reply appears in Appendix G to this Petition.

The unpublished Order of the District Court, dated August 23, 2007, denying reconsideration appears in Appendix H to this Petition.

The unpublished Order of the Court of Appeals, dated August 30, 2007, granting a temporary injunction appears in Appendix I to this Petition.

The unpublished Order of the Court of Appeals, dated Sept 20, 2007, granting a preliminary injunction pending appeal appears in Appendix J to this Petition.

The unpublished Order of the Court of Appeals, dated April 24, 2008, denying leave to include transcript of oral argument in Petition for *en banc* rehearing appears in Appendix K to this Petition.

The Mandate issued by the Court of Appeals, dated August 27, 2008, for the Court's February 22, 2008 opinion and order appears in Appendix L to this Petition.

JURISDICTION

The Court of Appeals Opinion affirming the permanent injunction and summary judgment was filed on February 22, 2008. A timely Petition for Rehearing was filed on April 7, 2008. The Court of Appeals denial of the Petition for Rehearing was issued on June 9, 2008 and is set forth in Appendix E.

The Court of Appeals Order regarding the Contempt Order was filed on June 2, 2008. A timely Petition for Rehearing was filed on June 10, 2008. The Court of Appeals denial of the Petition for Rehearing was issued on August 7, 2008 and is set forth in Appendix F.

This Court's jurisdiction is invoked under Title 28 U.S.C. Section 1257.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Federal Rules of Civil Procedure Rule 56 (c) reads: "**The [summary] judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.**" See Appendix M for the full text of Rule 56.

2. Federal Rules of Appellate Procedure Rule 41c reads: "**The mandate is effective when issued.**" See Appendix N for the full text of Rule 41.

3. The First Amendment to the United States Constitution reads: "**Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.**"

4. The Fourth Amendment to the United States Constitution reads: "**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the**

place to be searched, and the person or things to be seized."

5. The Fifth Amendment to the United States Constitution reads: **"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."**

6. The Ninth Amendment to the United States Constitution reads: **"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the People."**

7. The Internal Revenue Code, 26 U.S.C. Sections 6700 and 6701. See Appendix O for the text of each.

STATEMENT OF THE CASE

A. OVERVIEW

On March 15, 2003, Petitioners Petitioned officials of the United States for Redress of Grievances to reconcile well-documented discrepancies between the statutory requirements of the Internal Revenue Code and the United States'

institutionalized practice of forced withholding of pay by companies from workers' paychecks.

The Petition for Redress consisted of a letter dated March 15, 2003, from Petitioners to the federal officials, along with a blue colored folder labeled "Legal Termination of Tax Withholding for Companies, Workers and Independent Contractors." The Blue Folder contained a memo from Petitioners to Chief Executive Officers, Forms labeled WTP Form #1 through WTP Form #7, and Petitioners' Statement of Facts and Beliefs. A copy of the 100 plus pages that comprised the Petition for Redress is included at (A 295-407)[1] and (Docket # 23).

The obvious purpose of the material was to obtain a legal review of the material, either by the Government or by private tax professionals. For instance, the letter asked the federal officials to review the content of the Blue Folder for accuracy. The memo asked the CEOs to submit the material to a "rigorous review" by their corporate "tax attorneys, CPA's and accountants." The Forms themselves, designed for worker to submit to their companies, included requests to have tax professionals review the material for accuracy.

The federal officials did not respond. Petitioners distributed 3500 copies of the Blue Folder, free of charge, at 37 free, public meetings in the spring of 2003. They posted the entire content of the Blue

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[1] The letter "A" followed by a number refers to page numbers in the Appendix that accompanied the Brief to the Second Circuit on Behalf of the Defendants.

Folder on their website for anyone to download and print, free of charge. Petitioners attached appropriate disclaimers to the material.

On April 2, 2007, the United States filed this case seeking to permanently prohibit Petitioners from distributing the Blue Folders. The United States claimed Petitioners were promoting an "abusive tax shelter." The United States requested an order directing Petitioners to turn over the names, addresses, telephone numbers, email addresses and social security numbers of all people who received a copy of the material. The United States sought permanent injunctive relief "pursuant to the Court's inherent equity powers" and sections 7402 and 7408 of the Internal Revenue Code, as conduct subject to penalty under section 6700 (promoting an abusive tax shelter), and "any other penalty provision in the Internal Revenue Code."

Petitioners filed a motion to dismiss for failure to state a claim for which relief could be granted under the First and Ninth Amendments to the United States Constitution, and failure to state a claim for which relief could be granted under Section and 6700 and 6701.

The United States moved for a Summary Judgment based on a Statement of 21 material facts. (Appendix P).

Petitioners opposed, denying each of the 21 material facts, disputing 42 other facts the United States had included in its pleadings, and including 65 material facts that Petitioners alleged were not in dispute. Petitioners supported their version of the

facts with substantial and significant documentary evidence. (Appendix Q and R).

The United States filed a reply, denying Petitioners' version of the 42 "other" facts. (Appendix S).

Petitioners moved for permission to file a Sur-Reply on the ground that the Reply included a new argument. The Government did not oppose, but the District Court denied the motion. (Appendix G).

Without a trial, discovery or a hearing the Court granted summary judgment. Paragraph "c" of the Summary Judgment directed Petitioners to turn over to the United States the names, address, phone numbers, email addresses, and social security numbers of the people who received a copy of the subject material from Petitioners. (Appendix B).

Petitioners filed a motion for Reconsideration on the ground that the Court failed to construe the evidence in the light most favorable to Petitioners as required by Rule 56 and that the Order was violative of Rule 56 (c) due to the presence of facts material to the case that were in genuine dispute, requiring a trial. Petitioners provided the Court with additional supporting evidence disputing the Court's unsupported finding of harm and imminent lawless behavior. Petitioners moved for a stay pending appeal.

The Court denied reconsideration and directed the Clerk not to include in the record but to return

to Petitioners the evidence disputing the Court's finding of harm and incitement of lawless behavior. The Court denied the motion for a stay pending appeal. (Appendix H).

Petitioners moved for a narrowing of the Order and for an enlargement of the time to comply with the terms of the Order to allow Petitioners time to apply to the Second Circuit for a stay pending appeal. The Court denied Petitioners' motions.

The Court of Appeals granted Petitioners a temporary stay of enforcement of paragraph "c", pending a hearing by a motions panel. (Appendix I).

The motions Panel granted Petitioners a stay of enforcement of paragraph "c" pending the appeal. (Appendix J).

On February 4, 2008, at oral argument, the merits panel did not allow argument on the merits from either Petitioners or the United States. Instead, the two members of the panel present in the courtroom questioned Petitioner Schulz on matters immaterial to the case – i.e., if he receives any money, where he receives his money from and whether he pays federal taxes on that money. Then, a panel member demanded answers from the attorney representing the United States why this case was a civil case, not a criminal case. He all but insisted that the attorney for the United States go back to his client (the Internal Revenue Service) to arrange for a criminal action against Petitioners. See Appendix T for a copy of the transcript.

On February 22, 2008, "for substantially the reasons set forth in the district court's decision," the merits Panel affirmed the judgment, vacating the stay of enforcement its paragraph C saying "the district court found that defendants' illegal activities were harming individuals, who were exposing themselves to criminal liability by following the defendants' ill-conceived instructions...Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor the defendants' obligation under the injunction to provide a copy of the district court's order to recipients of the tax materials. Moreover, the district court found that the defendants' illegal actions were harming the government, which was not receiving required tax payments and was forced to expend resources to collect the unpaid taxes... Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor whether the recipients of defendants' materials are violating the tax laws. Thus we find no abuse of discretion with respect to the district court's imposition of the reporting requirements in Paragraph C of the injunction." (Appendix A).

Petitioners filed a timely Petition for *En Banc* Rehearing, a motion to include a transcript of the oral argument and a precautionary motion for a stay of enforcement of *paragraph "C"* pending rehearing.

The United States filed a motion with the district court to hold Petitioners in contempt for failure to comply with *paragraph* "C".

Petitioners requested a withdrawal of the motion for contempt on the ground that no Rule 41 Mandate had been issued finalizing the Second Circuit's February 22 judgment or order, the obligation of the parties becomes fixed only when the Mandate issues, Petitioners had filed a precautionary motion for a stay of the enforcement of paragraph "C" pending the completion of the appeals process, and the Second Circuit retains jurisdiction over the case until the Mandate issues.

The panel of judges who conducted the oral arguments denied Petitioners' motion to include the transcript of the oral argument and to stay *paragraph* "C." (Appendix K).

The district court entered an Order holding Petitioners in contempt for not complying with *paragraph* "c". Petitioners were ordered to pay $2,000 per day, retroactive to April 28, if they did not comply with *paragraph* "c" by 4:00 p.m., May 5, 2008. In addition, Petitioners were ordered to pay $2,000 per day, from May 5 through May 12 if they did not comply with paragraph "c" by May 12. In addition, Petitioners were threatened with additional coercive sanctions, including incarceration if they did not comply by May 12. Finally, Petitioners were ordered to pay the United States' costs associated with filing and prosecuting the motion for contempt. (Appendix D).

Under duress, Petitioners complied with *paragraph* "c", turning over to the United States the names and addresses of 225 people known to have received a copy of the Blue Folder.

Petitioners filed a motion with the Second Circuit to vacate the district court's April 28 contempt order on the ground that Petitioners had, in good faith, filed a Petition for Rehearing, that no Mandate had been issued finalizing the Second Circuit's February 22, 2008 judgment or order, that the obligation of the parties becomes fixed only when the Mandate issues, that a stay of the enforcement of paragraph "C" had been pending since April 7, 2008, that the Second Circuit retains jurisdiction over the case until the Mandate issues and the District Court cannot proceed in interim.

Without explanation, the Second Circuit denied Petitioners' motion to vacate the contempt order (Appendix C).

On June 9, 2008, the Second Circuit denied Petitioners' petition for a rehearing of the Court's February 22, 2008 opinion regarding summary judgment. (Appendix E).

On June 10, 2008, Petitioners filed a Petition for En Banc Rehearing of the Second Circuits' June 2 order on the ground that Petitioners had, in good faith, filed a Petition for Rehearing of that Court's February 22, 2008 decision, that no Mandate had been issued finalizing the February 22 judgment, that the obligation of the parties becomes fixed only when the Mandate issues, that a stay of the

enforcement of paragraph "C" had been pending since April 7, 2008, that the Second Circuit retains jurisdiction over the case until the Mandate issues and the District Court cannot proceed in interim..

On August 7, 2008, the Second Circuit denied Petitioners' petition for a rehearing. (Appendix F).

On August 27, 2008, the Second Circuit issued the Mandate finalizing the Court's February 22, 2008 judgment and order. (Appendix L).

B. STATEMENT OF FACTS

The Complaint is against WTP Forms WTP Forms 1-7. These Forms rely on and directly quote relevant statutes, regulations and court decisions. (Appendix R).

The Withholding Petition was clearly *earmarked* for review by the United States and/or tax professionals, with the stated goal being the termination of wage withholding as and ***if provided for under U.S. tax law***.

Receiving *no response* from the Government, Petitioners posted the entire contents of the Blue Folder on their website, allowing anyone to download and print the entire Petition *for free*. Petitioners included a NOTICE & DISCLAIMER with each document that read:

NOTICE & DISCLAIMER

"The materials presented herein contain legal content referencing and directly citing official U.S. tax statutes, tax regulations and federal court decisions regarding the limited authority of the U.S. Government to impose income taxes or withholding, and the legal duties and obligations (or lack thereof) that are allegedly imposed upon American businesses and the Americans that labor for them.

These materials are presented solely for educational purposes. Although these materials may be used in attempting to secure and exercise one's Constitutionally protected Rights, including the First Amendment Right to Petition the government for Redress of Grievances, We The People make NO representation that these materials constitute legal advice and furthermore specifically encourage all workers and business owners to submit these materials to qualified legal counsel for review and advice.

WTP has made every effort to provide these materials at **NO COST.**" (Emphasis in original).

See Schulz Declaration #1, Exhibit C. (Docket 12).

During April and May of 2003, Petitioners distributed, free of charge, 3,500 copies of the Petition at 37 free public meetings. (Schulz Declaration #1). Docket 12).

In advance of each of the 37 meetings, Petitioners formally NOTICED the appropriate United States officials of the date, time and location of each of the meetings, requesting that someone from the Government attend the meeting and advise Petitioners if anything they were doing or saying was false or misleading. *At no time did the*

Government ever respond to any of the 37 NOTICES. Copies of the 37 notices are included in the record. (Schulz Declaration #1, Exhibit F). (Docket 12).

Four years later, on March 30, 2007, with permits from the National Park Service and the District of Columbia Police Department, Petitioners led the third in a series of demonstrations in front of the White House in support of the subject Withholding Petition and other Petitions for Redress of Grievances. The next day, March 31, 2007, the *Washington Post* ran a photo of the demonstration and an article titled, "Agitating for the First Amendment." On April 2, 2007, just days after the demonstration outside the White House, the United States filed the instant case.

Notwithstanding the genuine dispute over material facts, especially the facts relating to the gravity of the government's harm, imminent incitement, the truth of the statements under attack and the commercial nature of the speech, the District Court adopted the United States' version of the facts and rejected Petitioners' version, as evidenced by its Order of August 9, 2007 granting Summary Judgment. (Appendix B herein).

What follows are some of the facts included in the District Court's Decision and Order that are in genuine dispute.

MATERIAL FACT IN GENUINE DISPUTE. Nowhere does the material in Petitioners' Blue Folder use the words, "Tax Termination Program." (District Courts

Order at page 2). The United States has admitted that the words "tax termination package" do not appear in Petitioners' materials. See Appendix Q herein, Fact 24. (Docket 21).

The Blue Folder does not counsel individual tax payers to do anything but ask the companies they work for to submit certain written material to a "rigorous review" by their "tax professionals (attorneys, CPAs and accountants) to determine if it is legal for the company to stop withholding, filing and paying to the IRS certain monies withheld from the paychecks of the workers.

The District Court's Decision quoted and relied heavily on the legal principles set forth in *U.S. v Raymond*, 228 F.3d 804, and likened Petitioner's Petition materials to Raymond's "De-Taxing America Program." However, unlike the "De-Taxing America Program", Petitioner's material does not include forms and instructions to guide anyone "through a process of 'de-taxing.'" *Raymond* at 807. Nor does Petitioners' material inform anyone "that if they complete the materials and directions in the Program they will be 'withdrawn' from the jurisdiction of the federal government's taxing authorities and the social security system and will no longer be required to pay federal taxes." *Raymond* at 807. Nor do Petitioners provide materials that are "pre-printed with the purchaser's name and various personal information" to be sent to "various government agencies, including the Internal Revenue Service ('IRS')." *Raymond* at 807. Nor does Petitioners' material suggest, much less instruct anyone to "file W-4 forms with their employers asserting that they are exempt from

federal taxation." *Raymond* at 807. Nor does Petitioners' material suggest, much less instruct anyone to "request a refund of taxes paid in prior years." *Raymond* at 807. Nor does Petitioners' material suggest, much less provide instructions to individual tax payers "on how to complete future tax returns to reflect that the purchaser has not incurred any tax liability in the previous year and consequently does not owe any federal income or social security taxes." *Raymond* at 807. Nor does Petitioners' material suggest or instruct individual tax payers to "cease paying federal taxes after completing the instructions provided in the Program materials." *Raymond* at 807. The District Court's Decision reads, "The obvious claimed benefit from participating in Defendants' plan is that individual income taxes need not be paid." (Order at 10). This is unsubstantiated and false. The Petitioners' material claims no such tax benefit. The only claimed benefit to an individual using Petitioners' material could be the (legal) cessation of *withholding* of pay by his company, no more, no less. Indeed, the Forms that provide the legal basis for executing such request are the key elements of Speech the United States complains of. Petitioners' material in no way counsels the individual regarding the use of his money nor how to handle his (alleged) ultimate liability for filing and payment of income taxes. Whether that individual does or does not use his money to intercede for Redress of constitutional torts and reestablishment of individual Rights is a personal choice, not counseled in the subject Educational Program, and no personal assistance has ever been given to effect such.

MATERIAL FACT IN GENUINE DISPUTE. Petitioners' Blue Folder has not harmed anyone. The District Court claims the material has the *potential* of putting individuals in harm's way, but *has* harmed the Government (Order at 15,16). Not only is there no evidence of harm to any individual, there is no evidence that the distribution of the Blue Folder has caused any company to stop withholding, much less evidence that the material has caused any individual to stop filing and paying the individual income tax. Other than an unsubstantiated declaration by Agent Gordon, there is no evidence that the Program is causing "insufficient payments to the Treasury" or "significantly increased efforts at collecting taxes" (Order at 15).

The United States (IRS Agent Gordon) deliberately misled the Court into believing that as a result of the distribution of the Blue Folder, 997 people "have not filed federal tax returns for a period of three years, which represents more than 2,991 unfiled tax returns" and that the estimated cost to the Government "attributable to filing substitutes for returns for the 2991 un-filed returns is $4,806,537 (asserted in the District Court Order at 15). There is absolutely no evidence in support such a claim. The claim is unsubstantiated and false.

The United States offers no evidence, none, in support of claim that somehow, as a consequence of their receipt of Petitioners' Blue Folder 997 people have gotten their companies to stop withholding and those 997 people then stopped filing and paying their taxes for three years. There are no facts in the record of this case

to support the notion that the distribution of Petitioners' Blue Folder on has resulted in the loss of any revenue to the United States, or that it as coast the IRS over $4 million to assess and collect taxes from anyone, much less 997 people.

Egregiously, the Court rejected and returned to Petitioners the documentary evidence Petitioners included in support of their motion for reconsideration – evidence that clearly showed the District Court's reliance on Agent Gordon's unsupported Declaration of harm to the Government was misplaced. (Appendix H herein).

MATERIAL FACT IN DISPUTE. Petitioners did not expect or want people to buy the Blue Folder and its material. (District Court Order at16). In fact, many thousands of paper copies of the materials were distributed for free by Petitioners, which is what Petitioners initially told the United States on March 15, 2003 would be the case. See Petitioners' Statement of Material Facts, Facts 2, 3, 4, 22, 23, 25, 26, 27, 48, 58 and 59. (Appendix Q). (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. Petitioners do not counsel "violations of the tax laws" or "improper filing of returns." (District Court Order at 18). See Petitioners' Statement of Material Facts, Facts 3, 5, 8,10, 20, 23, 24, 30, 34, 35, 36, 37,38, 40, 42, 43, 45, 46, 50, 51, 55, 56 and 62 (Appendix Q herein). (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. Petitioners' speech was never an integral part or a vehicle of any crime and never incited a crime. Imminent

lawless activity has never been a factor. (Order at 19). See Petitioners' Statement of Material Facts, Facts 3, 5, 8,10, 20, 23, 24, 30, 34, 35, 36, 37,38, 40, 42, 43, 45, 46, 50, 51, 55, 56 and 62 (Appendix Q herein) (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. Petitioners have never assisted in the filing of tax returns. (Order at 18). See Petitioners' Statement of Material Facts, Facts 3, 5, 8,10, 20, 23, 24, 30, 34, 35, 36, 37,38, 40, 42, 43, 45, 46, 50, 51, 55, 56 and 62 (Appendix Q, herein). (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. Petitioners have never urged the preparation or presentation of any false IRS forms. (Order at 19). See Petitioners' Statement of Material Facts, Facts 3, 5, 8,10, 20, 23, 24, 30, 34, 35, 36, 37,38, 40, 42, 43, 45, 46, 50, 51, 55, 56 and 62, and Statement at 15, 54 and 61. (Appendix Qherein). (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. Petitioners' Blue Folder and its content are not commercial speech much less false commercial speech. (Order at 20). See Petitioners' Statement of Material Facts, Facts 2, 3, 4, 22, 23, 25, 26, 27, 48, 58 and 59. (Appendix K herein). (Docket 21).

MATERIAL FACT IN GENUINE DISPUTE. The District Court wrote, "Although Defendant may sometimes give their materials away for free, they do solicit a donation for $20 for each packet of materials they provide." (Order at 20). This is false. The record clearly shows the situation to be the complete reverse of what the Court asserts. Many thousands of copies of the Blue Folder have been given

away completely for free, both in printed form and downloaded from Petitioners' website. From time to time, People who for one reason or another could not download the material would ask that the Blue Folder and its contents be copied and mailed to them, and a $20 donation was requested to partially cover the cost of doing so. However, the record of this case proves without a doubt that Petitioners' policy has always been that if a person would tell Petitioners he did not have the $20 the material was mailed to them anyway, free of charge. The record also shows that If Petitioners did not have the time to copy and mail the material the $20 donation was returned and the person was then notified of the fact. See Petitioners' Statement of Material Facts, Facts 2, 3, 4, and 22 (Appendix Q herein). (Docket 21).

The United States has not denied the compelling evidence included in Schulz Declaration #5, Exhibits A-M (Docket # 23), conclusively proving Petitioners did not commercialize the distribution of the Blue Folder or its contents, including video-taped recordings of a few of the 37 meetings where the Blue Folders were distributed free of charge. This is another significant material fact in genuine dispute requiring a trial.

MATERIAL FACT IN GENUINE DISPUTE. Imminent unlawful behavior has never been a factor in the distribution of the Blue Folder and its content. (Order at 20). This is obvious from the nature of the Forms in the Folders and their instructions. It is also obvious from the fact that the record of this case is void of any evidence that anyone acting on the content of the Blue Folders stopped withholding,

imminently or otherwise. The fact that someone may have sent material from the Blue Folder to the IRS in support of his belief that he does not have to pay taxes, as alleged by IRS Agent Gordon in his Declaration, is clearly an unintended consequence of Petitioners Petition for Redress regarding withholding. People send all kinds of materials to the IRS.

In affirming, "for substantially the same reasons," the Second Circuit accepted the District Court's findings that Petitioners' "illegal activities" were harming the recipients of his materials, by exposing them to criminal liability, as well as the United States, by depriving the Government of "required tax payments" and forcing it "to expend resources to collect the unpaid taxes."

However, neither the District Court nor the Second Circuit could have honestly found that numerous individuals had stopped paying their taxes as a result of Petitioners' statements. As Petitioners have previously argued, apart from anecdotal tales and stories, there is no evidence in the record in support of the assertion that the distribution of the material the Government is complaining about caused any entity to stop withholding a worker's earnings, much less caused any worker to stop paying taxes. Neither, of course, is there any evidence in the record in support of the assertion that the Government has had to expend resources to collect taxes that went unpaid as a consequence of the distribution of the subject materials.

MATERIAL FACT IN GENUINE DISPUTE. Turning to the issue of whether Petitioners' statements are false and fraudulent. In each and every case the individual statements the government is complaining about equate to individual, specific facts Petitioners *first* determined were *true*, *then* presented to the Government for a check on their truthfulness, *then* distributed them the public for free *after* the Government refused to respond. As the Record clearly shows, Petitioners' only motive was to encourage or "incite" private attorneys and accountants across the country to investigate the truth of the statements. The statements the Government is complaining about are specific, formal, narrowly-drawn, material facts in the form of questions – facts and questions that have *not* been addressed or answered by any court, government agency or academician, as the record of this case proves. Not one of the statements the Government is complaining about has been denied by the Government or the District Court. Instead, the Government and the Court have merely referred to the individual, specific facts and questions in the Blue Folder as "theories" that have been dismissed by the courts in one case or another. Specific statements of fact and questions are not "theories." A trial was required on this issue done.

FACT IN GENUINE DISPUTE. The Forms the Blue Folder do not mention the 16th Amendment. The Statement of Facts and Beliefs do not include any statements regarding the 16th Amendment or "liability" that have been rejected by the Courts. (Court Order at 10 and 16). See Petitioners' denials in their Statement of Material Facts, Fact 5, 6, 17,

41, 47 and 63. (Appendix Q). (Docket 21). Regarding the so-called "861" issue, see Petitioners' denials in their Statement of Material Facts, Facts 5, 14, 33, 41, 47 and 63. (Appendix Q). (Docket 21).

FACT IN GENUINE DISPUTE. Petitioners did not fail to rely on knowledgeable professionals (District Court Order at 11). See Petitioners' Statement of Material Facts, Facts 4 and 6. (Appendix Q herein). (Docket 21).

FACT IN GENUINE DISPUTE. Petitioners have not been litigating similar tax-related issues for a long time. (District Court Order, 11). Among the one hundred or more cases Schulz has litigated during the past twenty-nine years are two or three that dealt with local property taxes and misuse of state tax revenues. See Schulz Decl 3, Exh A, B. (Docket # 12).

FACT IN GENUINE DISPUTE. The Forms and Instructions in the Blue Folder do more than "encourage" people to have the material reviewed by "qualified legal counsel." (District Order at 12). See Petitioners' Statement of Material Facts, Facts 6, 7, 8, 9,12,16 and 19. See especially Fact #12. (Appendix Q). (Docket 21).

FACT IN GENUINE DISPUTE. Petitioners have never, ever said the tax laws are unconstitutional. (District Court Order at 17). See Petitioners' Statement of Material Facts, Facts 31, 39. (Appendix Q herein). (Docket 21).

FACT IN GENUINE DISPUTE. Petitioners' "main purpose" is not "to continue to disseminate the Educational Program and encourage employees and employers alike to participate." (Order at 17). The subject Program is an insignificant part of Petitioners' overall plans and activities. See Petitioners' Statement of Material Facts, Facts 1, 19 and 44 (Appendix Q, herein). (Docket 21). See also Schulz Declaration #3, Exhibit E (Docket # 12).

FACT IN GENUINE DISPUTE. Petitioners have not knowingly made any false statements as part of any scheme to defraud. Regarding the 16th Amendment, see Defendants' denials in the Statement of Material Facts, Facts 5, 6, 17, 41, 47 and 63. Regarding the so-called "861" issue, see Defendants' denials in the Statement of Material Facts, Facts 5, 14, 33, 41, 47 and 63. (Appendix Q herein). (Docket 21).

FACT IN GENUINE DISPUTE. As clearly shown in the Blue Folder itself and argued in the pleadings, Petitioners most certainly did not "offer to sell a customized legal opinion letter from an attorney or CPA." (Order at 20). An online link to the material had always stated, word for word, "Click Here to request information about ordering a customized legal opinion letter from an attorney or CPA to be sent to your company or their tax and/or legal advisors. (Note: WTP is not involved with the creation or solicitation of these letters. WTP receives NO portion of their cost. Special discounts are available for WTP Congress members.)"

The "Click Here" link always brought up the email form and address of Preferred Services, the

organization that prepared and copyrighted the forms. The party interested in having an attorney or CPA provide an opinion on the contents of the Forms in the Blue Folder always dealt directly with Preferred Services. The message says Preferred Services offers a discount from its normal fee for such opinion letters to the person requesting a letter. This means whatever money traveled from the person requesting the letter to Preferred Services was reduced by some amount. Petitioners are not, and have never been, involved in any manner in the transaction. The offer by Preferred Services and any follow up transaction between Preferred Services and the person requesting a legal opinion letter does not turn the Blue Folder and its contents into commercial speech. The licensed attorneys that prepare(d) such letters for Preferred Services, including Paul Chappell, an attorney who retired from the IRS's Office of the Chief Counsel, also reviewed, and formally approved the detailed content of the subject Forms that were included in the Blue Folders that were distributed by Petitioners.

C. FEDERAL JURISDICTION IN DISTRICT COURT

The U.S. District Court for the Northern District of New York, had jurisdiction under 28 U.S.C. Section 1331.

REASONS FOR GRANTING THE WRIT

A. The Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this Court, by sanctioning a summary judgment that was granted without a trial, where there are facts material to the case that were in genuine dispute.

The United States is entitled to its arguments but not to its version of the facts.

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party if there is a "genuine" dispute as to those facts. "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Petitioners and the United States tell two different stories regarding such material facts as the gravity of any harm to the public fisc, the commercial nature of the challenged speech, the truth of the speech and whether the material incited anyone to break the law, imminently or otherwise. The United States' version of the facts is so blatantly contradicted by the record that no reasonable jury could believe it. The District Court abused its discretion by adopting the United States' version of the facts for purposes of granting the United States' a motion for summary judgment.

Petitioners provided sufficient evidence to be entitled to a trial. Only a trial could possibly get to the truth. "It is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 288-289.

Petitioners have done more than simply show that there is some "metaphysical" doubt as to the material facts. The record of this case, taken as a whole, could lead a rational trier of fact to find for Petitioners. Therefore, there are genuine issues for trial. See Scott v. Harris, 127 S. Ct. 1769, 1776 (2007).

Reasonable minds could differ as to the import of the evidence here. Therefore, summary judgment in this case, like that of a verdict, should not have

been "directed." See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986).

From a reading of the Decision and Order, and a review of the proceedings of the case, it is clear the District Court judge was either arbitrary and capricious or he abused his discretion by, in effect, deciding there was no genuine issues for trial. Denying Petitioners the benefit of a full adversarial proceeding with discovery, witnesses and a hearing, the judge weighed the evidence determining, himself, the "truth", notwithstanding the presence of numerous facts material to the case that were in genuine dispute requiring a trial. This was a violation of Rule 56c and a violation of Due Process. "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id at 249.

"There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is the need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Id at 250.

As shown above under Statement of the Facts, there are numerous facts material to this case in genuine dispute. All that was required for Petitioners to be entitled to a full adversarial proceeding and trial was a genuine dispute over **any** one of the material facts. "Under Rule 56,

district court litigants opposing summary judgment have a right to a trial whenever there exists a 'genuine issue as to any material fact.'" Agosto v. Immigration & Naturalization Serv., 436 U.S. 748, 754 (1978).

The Court of Appeals affirmed the District Court's summary judgment "for substantially the same reasons." If the District Court erred in granting summary judgment based on its assessment of the credibility of the evidence before it, the Court of Appeals erred in affirming, without a de novo review, based on its assessment of the credibility of the evidence. "[J]ust as a district court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented, see *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467-468 (1962); 6 J. Moore, Federal Practice para. 56.02 [10], p. 56-45 (2d ed. 1976), so too a court of appeals is not at liberty to deny an individual a *de novo* hearing on his claim ... because of the court's assessment of the credibility of the evidence" Agosto v. Immigration & Naturalization Serv., 436 U.S. 748, 756-7 (1978).

In sum, the District Court based its findings on its review of "dueling affidavits" that clearly placed numerous material facts in genuine dispute, not the least of which is whether the Petitioners' speech incited any lawless activity, whether it was commercial speech, whether it was false commercial speech, and whether the United States of America or its citizens had suffered any harm due to the distribution of that speech.

A hearing or a trial is required to get to the truth of the material facts that are in genuine dispute.

B. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

In a denial of Petitioners' Due Process Rights, the merits panel at the Second Circuit showed extreme bias and prejudice toward Petitioners during oral argument (see transcript at Appendix R herein), and then in denying Petitioner's motion to include the transcript of the oral argument in Petitioners' petition for *en banc* rehearing (Appendix S).

The Panel showed bias by appearing as prosecuting attorney and cooperating with the Executive in a collective decision to deny Schulz his constitutional Right to Due Process. As clearly documented by the transcript, the Panel ignored the potent facts and arguments raised in the appeal before it; the Panel would not allow those issues to be argued – by either side.

The Panel exhibited significant prejudice and bias against Schulz, presumably characterizing Schulz as a political nuisance -- a problematic heretic who persistently preaches against the established orthodoxy by daring to openly

question the constitutionality of the application of the internal revenue laws.

The transcript clearly shows that by its comments the Panel harbored deep prejudice and bias against Schulz.

The two appellate judges present on the bench exhibited impatience and frustration. Unable to discredit Petitioners' legal arguments and the array of exculpable evidence Petitioners so meticulously presented in the District Court in twelve sworn Declarations, the appellate Judges grilled Schulz on matters that had nothing to do with the case before them, including how much and where he gets his money from and whether he pays taxes on it. Completely unprovoked, and without ever identifying any criminal code that had been violated, Judge Newman personally attacked and questioned Schulz. He persistently urged (to the point of "instructing") the appearing DOJ attorney to criminally prosecute Schulz. Under persistent verbal pressure from Judge Newman (a former United States Attorney from Connecticut) the DOJ attorney finally agreed in open court to meet with his client (IRS) for the purpose of pursuing a criminal action against Schulz. The DOJ attorney was obviously surprised and unprepared to discuss this. The transcript shows he, too, was cut off when attempting to argue the issues of the instant case.

Judge Newman appeared to be attempting to create a criminal cause of action against Schulz who interrogated as though he was a criminal

defendant in Judge Newman's courtroom. Judge Newman then ridiculed DOJ for bringing the civil case, even after DOJ admitted to Judge Newman that its client (IRS) had purposely decided not to pursue a criminal case, presumably because Schulz had not committed any crime. Neither the instant civil Complaint nor the subsequent record of the case includes any hint or evidence of criminal behavior.

"It is an essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause." Marbury v. Madison, 5 U.S. 137, 175.

The conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a not unreasonable conclusion that the Panel's ability to carry out its judicial responsibilities with integrity, impartiality, and competence was impaired.

After receiving assurance from the DOJ that it would consider pursuing a criminal action the Panel affirmed the Summary Judgment, basing its terse ruling on "substantially the reasons set forth in the district court's decision."

In a further call for this Court's supervisory power, the District Court referred in its Summary Judgment to a Declaration by IRS Agent Gordon as evidence that Petitioners' speech was causing harm to the United States, but when confronted with evidence attached to Petitioners' motion for reconsideration that appeared to completely undermine Agent

Gordon's testimony, the Court directed the Clerk to return the evidence to Petitioners and to keep it out of the record. The evidence proved Gordon's Declaration to be misleading and false. Gordon had declared that 997 (unidentified) people failed to file and pay their individual income taxes for each of three years, costing the United States over $4 million to prepare 2,291 substitutes for return, implying that that was a result of the distribution of Petitioners' speech on withholding – i.e., the Blue Folder. Petitioners' evidence showed the District Court was clearly wrong to link Petitioners' Blue Folder to Gordon's Declaration. Egregiously, the District Court expunged the evidence from the record and did not change the Summary Judgment. (Appendix O herein).

In addition, in yet another call for this Court's supervisory power, the District Court showed its bias and prejudice against Petitioners by denying their motion for leave to file a Sur-Reply to address an argument the United States advanced for the first time in its Reply to Petitioners' opposition to the motion for summary judgment. (Appendix N herein).

In a denial of Petitioners' Due Process Rights, the Second Circuit affirmed the District Court's violation of Rule 56 c. Before the Circuit Court were numerous facts that are material to the case that are in genuine dispute. The Second Circuit failed to undertake a *de novo* review of the facts of the case, especially in light of the strength and aggressiveness of Petitioners' Rule 56 c argument and their supporting evidence.

C. Rule 41(c) of the Federal Rules of Appellate Procedure provides an automatic stay of the enforcement of an opinion and order of a Court of Appeals, until such time as that Court issues the Mandate.

The Notes of Advisory Committee on 1998 amendments to Rule 41(c) of the Federal Rules of Appellate Procedure read as follows:

> *Note to Subdivision (c).* Subdivision (c) is new. It provides that the mandate is effective when the court issues it. A court of appeals' judgment or order is not final until issuance of the mandate; at that time the parties' obligations become fixed.

The Mandate finalizing the Second Circuits February 22, 2008 Opinion and Order was not issued until August 27, 2008. See Appendix T herein.

On April 7, 2008, Petitioners filed a timely Petition for en banc rehearing of the Second Circuit's February 22, 2008 opinion and order that affirmed summary judgment and vacated the stay of enforcement of paragraph c of the summary judgment. At the same time, in an abundance of caution – i.e., in case Petitioners' had overlooked something in their interpretation of Fed. Rules of Appellate Procedure Rule 41(c) -- Petitioners filed a motion with the Second Circuit for a stay of enforcement of paragraph c.

Later that same day, the United States filed a motion for Contempt against Petitioners (for not complying with the requirements of paragraph c of the summary judgment).

On April 28, 2008, the District Court granted the motion for contempt. (Appendix D herein), in apparent violation of Fed. Rules of Appellate Procedure Rule 41(c), there being no Mandate by the Second Circuit of the February 22, 2008 Opinion and Order until August 27, 2008 (Appendix T herein).

Either an automatic stay was in place on April 28, 2008 under Rule 41(c), absent the Mandate, or a stay was pending following Petitioners' filing of (precautionary) motion for a stay pending the completion of the appeals process, first with the Second Circuit on April 7, 2008 (denied on April 24, 2008), and then with the Supreme Court of the United States on May 2, 2008 (denied on May 5, 2008).

Alternatively, the District Court abused its discretion given Petitioners' good faith efforts in exhausting what they believed to be their judicial remedies. See Statement of the Case, above.

Petitioners acted in good faith. They have not acted vexatiously, wantonly, or for oppressive reasons. They had good and fair reason to believe there was merit in fact and in law underpinning their litigation. They have never acted to harass or delay, much less with malice. They believe in exhausting their legitimate judicial remedies. They

have not acted with reckless disregard for the truth or the law.

Petitioners studied the plain language, the history, notes and the case law related to F.R.A.P. Rule 41. They had good and fair reason to believe that because no FRAP Rule 41 Mandate had issued, the February 22 decision by the Second Circuit affirming *paragraph "c"* and vacating the stay of enforcement of *paragraph "c"* was not final and would not be final until after a determination of the Petition for En Banc Rehearing, which was timely filed by on April 7, 2008.

In other words, Petitioners had good and fair reason to believe an automatic stay of enforcement of paragraph "c" of the Injunction Order was in effect.

Petitioners had good reason to believe the Second Circuit's September 20, 2007 stay of paragraph "c" pending appeal (Appendix Q herein) was inextricably intertwined with the appeal from paragraph "c," not to be separated until the Mandate issued, finalizing the judgment.

Petitioners had good reason to believe the two issues (the stay of *paragraph "c"* and the appeal of *paragraph "c"*) were not, and could not be cleaved in two by the Second Circuit's February 22, 2008 decision until the Mandate issued.

If the finality of the Second Circuit's February 22, 2008 decision was pending the issuance of the Mandate that, in turn, was pending the determination of the Petition for En Banc hearing, it

was reasonable for Petitioners to assume the finality of the Court's decision to lift the stay was also pending the issuance of the Mandate and the determination of the Petition for the rehearing.

The District Court's reliance on the cases cited on pages 3-4 of the Contempt Order (Appendix D herein) is misplaced. Those cases are inapposite. Here, unlike those cases, a stay pending appeal was granted by the Court of Appeals, and the Order that simultaneously affirmed paragraph "c" of the Injunction Order and vacated the stay of enforcement of paragraph "c" would not be finalized until a mandate issued under Rule 41. Here, unlike the cases cited by the District Court, the mandate stayed is the mandate on appeal. Whether Petitioners are required to comply with paragraph "c" of the District Court's Injunction Order is, in fact, the heart of the matter "involved in the appeal."

Petitioners argue the 2nd Circuit was merely recognizing, and stating its compliance with the requirements of Rule 41 when it said in U.S. v. Pepin, 514 F.3d 193, 209, "the order of this Court staying the trial is vacated effective upon issuance of the mandate," and when it said in Chase v. Turner, 964 F.2d 159, 166, "Pending issuance of the mandate, we stay the order, effective forthwith," and when it said in Oliver v. Vincent, 498 F.2d 340, 346, "Effective upon the filing of the mandate the stay heretofore granted is vacated and the order of the district court is affirmed."

D. The free public distribution of copies of a Petition to the Government for Redress of Grievances, which the Government refused to respond to, and which speech neither advocates nor incites lawless behavior, imminent or otherwise, is protected from retaliation by the Speech, Assembly and Petition clauses of the First Amendment and by the Ninth Amendment to the United States Constitution.

The District Court rejected Petitioners' argument that their activities were protected by the First Amendment. (District Court Order, at 17 – 23). (Appendix B herein). The court observed that false, misleading, and deceptive commercial speech could be enjoined, and it held that Petitioners' activities could be enjoined even if they were not commercial speech, because the First Amendment does not protect speech that incites imminent lawless action. (Order at 20 – 21.)

Petitioners' version of the facts prove Petitioners' speech was neither commercial not false. Nor did it incite any lawless action, imminent or otherwise. A reasonable jury would agree with Petitioners.

Petitioners' distribution of the subject Petition for Redress of a Grievance relating to the forced withholding by companies of a worker's pay is protected from retaliation by the First Amendment's Speech, Assembly and Petition clauses as well as by the Ninth Amendment. The

identities and contact information of those people who received a copy of the material is personal and private information protected by the Fourth Amendment's privacy clauses.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the opinion and orders of the Court of Appeals in this matter.[2]

Dated: September 4, 2008

Respectfully submitted,

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[2] If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals or the District Court for redetermination in light of this Court's opinions in First National Bank, supra, Liberty Lobby, supra, Agosto, supra, and Scott, supra.

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Supreme Court, U.S.
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(2)

No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 2008

ROBERT L. SCHULZ, et al.,

Petitioners,

- against -

UNITED STATES OF AMERICA

Respondent

APPENDIX

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2007

(Argued: February 4, 2008 Decided: February 22, 2008)

Docket No. 07-3729-cv

United States of America,

Plaintiff-Appellee,

-v.-

Robert L. Schulz, We The People Foundation For Constitutional Education, Inc., and We the People Congress, Inc.,

Defendants-appellants.

Before:

Newman, Winter and Sotomayor,
Circuit Judges.

Defendants-appellants Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., and We the People Congress, Inc., appeal an August 15, 2007 judgment of the United States District Court for the Northern District of New York (McAvoy, J.). We affirm the district court's order

under 26 U.S.C. § 7408 permanently enjoining defendants from violating 26 U.S.C. §§ 6700 & 6701 based on their distribution of false and misleading materials concerning corporate obligations to withhold federal taxes on wages.

ARTHUR T. CATTERALL, Attorney, Tax Division, Department of Justice, Washington, D.C. (Richard T. Morrison, Acting Assistant Attorney General, Gilbert S. Rothenberg, Acting Deputy Assistant Attorney General, Andrea R. Tebbets, Attorney, Tax Division, Department of Justice, Washington, D.C., and Glenn T. Suddaby, United States Attorney for the Northern District of New York, *on the brief*), *for Plaintiff-Appellee*.

Robert L. Shulz, *pro se* (Mark Lane, *on the brief*), Queensbury, NY, *for Defendants-Appellants*.

Per Curiam

Defendants-appellants Robert L. Schulz ("Schulz"), We the People Congress, Inc., and We the People Foundation for Constitutional Education, Inc. (together with We the People Congress, the "Corporations"), appeal an August 15, 2007 judgment of the United States District

Court for the Northern District of New York (McAvoy, J.), permanently enjoining defendants from violating 26 U.S.C. §§ 6700 & 6701 based on their distribution of false and misleading tax materials concerning corporate obligations to withhold federal taxes on wages. [1]See 26 U.S.C. § 7408 (providing district courts authority to enjoin persons from engaging in certain "specified conduct" made illegal by the tax laws, including 26 U.S.C. §§ 6700 & 6700). The district court also ordered defendants to, *inter alia*, provide the names and contact information of the individuals who have received defendants' tax materials, and to notify such recipients of the district court's decision and order.

Defendants principally argue that the tax materials at issue constitute protected political and/or educational speech under the First Amendment of the Constitution. Defendants further argue that their actions in promoting the materials are otherwise protected under the First Amendment's Petition Clause, on the theory that the government has yet to respond to defendants' repeated inquiries as to whether, and on what basis, any information in the tax materials is false. Finally, defendants assert that their actions were not violative of 26 U.S.C. §§ 6700 or 6701.

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[1] The tax materials at issue were distributed in a packet called the "Blue Folder," which was made available by defendants both in hard copy and electronically via the internet. The district court found that the materials included false representations about the tax laws, as well as instructions and forms to "legally terminate withholding."

We have considered all of defendants' arguments and find them to be without merit. We affirm the judgment for substantially the reasons set forth in the districts court's decision. *See United States v. Schulz*, __F. Supp. 2d __, 2007 U.S. Dist. LEXIS 58271 (N.D.N.Y. Aug. 9, 2007).

We also vacate the stay we previously imposed with respect to Paragraph C of the injunction, which directs defendants to provide to the government the names and contact information of the individuals who have received the tax materials.[2] We find that Paragraph C is sufficiently tailored to the legal violations at issue, *see Society for Good Will to Retarded Children, Inc. v. Cuomo*, 737 F.2d 1239, 1251 (2d Cir. 1984) ("Injunctive relief should be narrowly tailored to fit the specific legal violations."), and that the district court did not abuse its discretion in imposing the conditions specified in that provision, *see Ragin v. Harry Macklowe Real Estate Co.*, 6 F. 3d 898, 909 (2d Cir. 1993) (stating that the scope of an injunction is reviewed for abuse of discretion). The district court found that defendants' illegal activities were harming individuals, who were exposing themselves to criminal liability by following the defendants' ill-conceived instructions. *See Schulz*, 2007 U.S. Dist. LEXIS 58271, at *23. Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor the defendants'

---

[2] On September 20, 2007, we denied defendants' motion to stay the full injunction, and instead granted their motion only with respect to Paragraph C only.

obligation under the injunction to provide a copy of the district court's order to recipients of the tax materials. Moreover, the district court found that the defendants' illegal actions were harming the government, which was not receiving required tax payments and was forced to expend resources to collect the unpaid taxes. *Id.* At *24. Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor whether the recipients of defendants' materials were violating the tax laws. Thus, we find no abuse of discretion with respect to the district court's imposition of the reporting requirements in Paragraph C of the injunction.

Accordingly, we **AFFIRM** the district court's judgment and **VACATE** the partial stay on the district court's injunction. Moreover, we **DENY** defendants' pending motion requesting that we take judicial notice of a petition for rehearing of the Supreme Court's order denying a writ of certiorari in *We the People Foundation, Inc. v United States,* 485 F.3d 140 (D.C. Cir. 2007),*cert. denied,* -- S. Ct. --, 2008 WL 59413 (Jan. 7, 2008), as consideration of the petition for rehearing in that case is unnecessary to the disposition in this case.

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v. 1:07-cv-0352

ROBERT L. SCHULZ;
WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.; And WE THE PEOPLE CONGRESS, INC.,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

The United States of America commenced the instant action seeking to enjoin Defendants from promoting an illegal tax shelter. Presently before the Court are Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12 and Plaintiff's cross-motion for summary judgment pursuant to Fed. R. Civ. P. 56.

I. FACTS

Defendant Robert L. Shulz ("Schulz") organized Defendant We the People Foundation for Constitutional Education Inc., and We the

People Congress, Inc. in 1997. The Complaint alleges that, although Shulz purports to have founded the corporate defendants for educational purposes, he "has used the two...entities...to market a nationwide tax-fraud scheme designed to help customers evade their federal tax liabilities and to interfere with the administration of the internal revenue laws." Compl. At ¶ 6. Defendants distributed a "Tax Termination Package" as part of "Operation Stop Withholding" to help individuals stop withholding, paying, and filing federal taxes. The United States alleges that Defendants furthered their scheme through the use of false and misleading forms in place of standard Internal Revenue Service ("IRS") forms, and based upon the false premises that the federal income tax system is voluntary, the 16th Amendment to the United States Constitution was not properly ratified, and that federal income tax does not apply to most wages.

The Complaint alleges that, among other things, "[a]s part of the Tax Termination scheme, Defendants give customers (both employers and employees) step-by-step instructions on how to fraudulently terminate withholding of federal income and employment taxes." Compl. At ¶ 14. The entire scheme is alleged to be premised upon false representations and legal positions known to have been rejected by the courts, including a criminal trial in which Schulz testified. See United States v. Simkanin, 420 F.3d 397 (5th Cir. 2005).

The Complaint alleges that Defendants' scheme causes harm to the United States by assisting customers to evade taxes and obstructing the IRS's efforts to administer the federal tax laws. The United States seek an injunction pursuant to Internal Revenue Code § 7408 precluding Defendants from making known false or fraudulent statements in connection with the organization or participation in the sale of a plan or arrangement regarding any tax benefit.

Presently before the Court is Defendants' motion to dismiss pursuant to Fed. R. Civ.P. 12 and Plaintiff's cross-motion for summary judgment pursuant to Fed R. Civ. P. 56.

II. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedures governs motions for summary judgment. It is well settled that on a motion for summary judgment, the Court must construe the evidence in the light most favorable to the non-moving party, See Tenenbaum v. Williams, 193 F.3d 581, 593 (2d Cir. 1999), and may grant summary judgment only where "there is no genuine issue as to any material fact and...the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is genuine if the relevant evidence is such htat a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). A party seeking summary judgment bears the burden of informing the court of the basis for the motion and of identifying those portions of the record that the moving party

believes demonstrate the absence of a genuine issue of material fact as to a dispositive issue Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant is able to establish a prima facie basis for summary judgment, the burden of production shifts to the party opposing summary judgment who must produce evidence establishing the existence of a factual dispute that a reasonable jury could resolve in his favor. Matsushita Elec. Indus. Co. v Zenith Radio Corp., 475 U.S. 574, 587 (1986). A party opposing a properly supported motion for summary judgment may not rest upon "mere allegations or denials" asserted in his pleadings, Rexnord Holdings, Inc. v Bidermann, 21F.3d 522, 525-26 (2d Cir. 1994), or on conclusory allegations or unsubstantiated speculation. Scotto v. Almenas, 143 F3d 105, 114 (2d Cir. 1998).

III. DISCUSSION

a. Plaintiff's Request for Injunctive Relief

"Section 7408 of the Internal Revenue Code empowers a district court to grant an injunction when (1) the defendant has engaged in conduct subject to penalty under 26 U.S.C. § 6700, and (2) injunctive relief is appropriate to prevent recurrence of such conduct." United States v. Gleason, 432 F3d 678, 682 (6th Cir. 2005). "Because section 7408 expressly authorized the issuance of an injunction, the traditional requirements for equitable relief need not be satisfied." Id.

1. Internal Revenue Code § 6700

The Court will first address whether Defendant's conduct implicates the proscriptions of 26 U.S.C. § 6700[1] Section 6700 is aimed at abusive tax shelters. To obtain an injunction under § 6700, the government must prove five elements:

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[1] That section reads, in relevant part, as follows:

(a) Imposition of penalty – Any person who –

(1)(A) organizes (or assists in the organization of)—

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) –

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter, shall [be guilty of a crime].

(1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.

United States v. Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000); Gleason, 432 F.3d at 682. The Court will address each element *seriatim*.

a. Whether Defendants Organized or Sold, or Participated in the Organization or Sale of, an Entity, Plan, or Arrangement

Under § 6700, "any 'plan or arrangement' having some connection to taxes can serve as a 'tax shelter' and will be an 'abusive' tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits." United States v. Raymond, 228 F.3d 804, 811 (7th Cir. 2000). In Raymond, the Seventh Circuit found that "the definition of a tax shelter in § 6700 is 'clearly broad enough to include a tax protester group." Id. (quoting United States v. Kaun, 827 F.2d 1144, 1147 (7th Cir. 1987).

The facts in the Raymond case are quite similar to the present one.

Raymond and Bernhoft [were] active members of the U.S. Taxpayers Party and were the chief participants in a business known as Morningstar Consultants ("Morningstar"). Between January and June of 1996, Morningstar ran a weekly advertisement in a local Wisconsin newspaper under the caption "Just Say No." The Just Say No advertisement contained the following statements: 1) "Federal, State & Social Security Taxes are Voluntary;" 2) "The Internal Revenue Service has no Statutory Authority to: Compel you to file a Tax Return, Require withholding from your paycheck, Levy or Lien your property, Audit your Books & Records." This advertisement was part of an effort by Morningstar to market the "De-Taxing America Program" (the "Program"). The Program consists of three volumes of materials. These materials contain information presenting the view that, among other things, the federal income tax is unconstitutional and that persons who are not federal employees or residents of the District of Columbia are not legally required to pay federal income tax. In addition to providing information regarding general tax-protest principes, the Program includes several forms and instructions to gude the purchaser through the process of "de-taxing." Purchasers are informed that if they complete the materials and

> directions in the Program they will be "withdrawn" from the jurisdiction of the federal government's taxing authorities and the social security system and will no longer be required to pay federal taxes....Program customers are instructed to file W-4 forms with their employers asserting that they are exempt from federal taxation and requesting that the employers stop withholding federal income tax and social security payments from their paychecks....
>
> The Program also provides the purchaser with instructions on how to complete future tax returns to reflect that the purchaser has not incurred any tax liability in the previous year and consequently does not owe any federal income or social security taxes.

Id. at 806-07. "The Program purported to provide step-by-step instructions for 'removing' the purchaser from the federal income and social security tax systems. The Program materials assured readers that the federal government is without authority to tax them and that by following the instructions outlined in the Program individuals can legally refuse to pay federal income and social security tax." Id. at 811. The Seventh Circuit concluded that the program was a tax shelter. The Raymond court further found that because the defendants in that case had sold the product, it qualified as a plan within the meaning of § 6700.

Here, as in Raymond, Shulz has organized the two corporate Defendants. See Def.'s Stmnt. Of Mat. Facts at ¶ 1. Defendants offer materials to employees and employers stating that, among other things, Congress is without authority to legislate an income tax on people except in the District of Columbia and United States territories, the IRS is prohibited from compelling people to sign and file income tax returns, and the Sixteenth Amendment to the United States Constitution was never properly ratified and, therefore, the income tax violates the Constitution. Schulz Decl. #1 at Ex. B. Among other things, Defendants' materials instruct workers how to terminate their W-4 Agreement and demand that the employer discontinue making withholding from their pay. Id. at Ex. C. In fact, Defendants provide forms for that very purpose. Id.[2] Thus, the Court finds that Defendants have organized a "plan" or "arrangement." Although there are some questions of fact concerning whether Defendants sold their materials, they clearly "organized" the materials for presentation.[3]

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[2] Other examples of Defendants' plan are set forth *infra* at pp. 9-10 and 22-23.

[3] The evidence in the record is that Defendants provided the program materials and gave seminars for free. The evidence also demonstrates that Defendants used the materials to solicit donations to the ortganizations and to encourage people to join their organization for a fee. In a prior case involving Defendant Shulz, it was noted that

> We the People Foundation's website invites visitors to make a donation to an organization via credit card to PayPal or by mail directly to We the People Foundation. The address given for the We The

Defendant Schulz admits that he undertook "'Operation Stop Withholding,' a national campaign to instruct company officials, workers and independent contractors on how to legally stop wage withholding." Schulz Decl. #1 at ¶ 4. Defendants also offer to provide a "customized legal opinion letter from an attorney or CPA to be sent to your company or their tax and/or legal advisors." Schulz Decl. #1 at Ex. C, p. 11. Stated otherwise, Defendants are promoting an abusive tax shelter. Accordingly, the first element is satisfied because Defendants organized a plan or arrangement concerning the avoidance of taxes.

b. Whether Defendants Made or Caused to be Made, false or Fraudulent Statements Concerning the Tax Benefits to be Derived From the Entity, Plan, or Arrangement

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People Foundation is Schulz's home address. The website also contains an on-line e-store where products can be purchased through PayPal. One of the products sold over the website is the "Tax Termination Package," which is offered for sale for $39.95. The product is described as "Bob Schulz, Chairman of the We The People Foundation, stopped paying income taxes and filing returns. These are the materials he sent to the IRS. Make sure to get a copy for your personal records." [The IRS] has also learned that the We The People Foundation filed IRS Form 990 for the years ending December 31, 2001, December 31, 2002, and December 31, 2003 and the returns indicate that the organization showed considerable revenue for each year.

Schulz v. U.S., 2006 WL 1788194, at *1 (D. Neb. 2006)

"[T]o prove a violation of § 6700, the Government must show that the [defendants] made false or fraudulent statements concerning the tax benefits of participating in the plan or arrangement." Raymond, 228 F.3d at 812. "Two types of statements fall within the statutory bar: statements directly addressing the availability of tax benefits and those concerning factual matters that are relevant to the availability of tax benefits." United States v. Cambpell, 897 F.2d 1317, 1320 (5th Cir. 1990). Once again, referral to Raymond is instructive. In that case, the Seventh Circuit found that the defendants' statements that "payment of income tax is a voluntary activity and that individuals cannot be legally compelled to file tax returns or submit to tax investigations or penalties" are clearly false representations concerning the government's authority to tax its citizens." Id. That court concluded that "[t]hese statements made in conjunction with the sale of the Program operated as false assurances that refusing to pay taxes in accordance with the Program's instructions is a lawful activity for which the government has no legal authority to punish Program subscribers." Id.

Defendants' conduct here is virtually identical to that in Raymond. Defendants make claims similar to those in Raymond. Among other things, Defendants affirmatively state that domestic income is not taxable, the filing of a tax return is voluntary, see Defs' Mem. Of Law at 10; Schulz Decl. #1 at Ex. B, p. 14 and that the 16th Amendment was not properly ratified and,

therefore, the income tax is unconstitutional.[4] Defendants also instruct that, "[o]nce the government has been properly notified and termination of withholding has been procedurally put into effect, the [employer] has no further reporting requirements under U.S. law." Schulz Decl. #1 at Ex. C, p. 8. Defendants further claim that the IRS is prohibited by the Fourth and Fifth Amendments from compelling people to sign and file income tax returns. Schulz Decl. #1 at Ex. C. Defendants also claim that they, and other taxpayers, have the right to "retain[] [their] money until [their] grievances are redressed (remedied)." Schulz Decl. #1 at Ex. H, p.2.[5] These are all false statements of fact. See 26 U.S.C. § 3102 (requiring employers to make deductions from wages); Raymond, 228 F.3d at 812 (discussing various similar false statements about taxes); Schiff v. United States, 919 F.2d 830 (2d Cir. 1990); United States v. Sitka, 845 F.2d 43, 47 (2d Cir. 1988) ("[F]ederal courts have upheld and relied on the Sixteenth Amendment for more than seventy-five years. . . The Sixteenth Amendment was proposed by Congress and ratified by the states in accordance with procedures set out in Article V of the Constitution, and its ratification was then certified after careful scrutiny by a member of the executive branch acting pursuant to statutory duty. The validity of that process and

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[4] Other false statements are discussed *infra* at pp. 22-23.

[5] Defendants sent a long list of questions to various government agencies demanding answers. It is Defendants' position that, until the government responds, it need not pay taxes.

of the resulting constitutional amendment are no longer open questions.") (internal citations omitted); Coleman v. Commission of Internal Revenue, 791 F.2d 68, 70-72 (7th Cir. 1986) (statements that wages are not income and that the income tax is unconstitutional are false and "tired arguments");United States v. Carley, 783 F.2d 341, 344 (2d Cir. 1986) ("'[T]here is no question but that Congress has the authority to impose an income tax.'") (quoting Ficalora v. Commissioner, 751 F.2d 85, 87 (2d Cir. 1984)); Ficalora, 751 F.2d at 88 (wages are taxable income); Kile v. Commissioner of Internal Revenue, 739 F.2d 265, 167-68 (7th Cir. 1984) (similar to Coleman); Denison v. Commissioner of Internal Revenue, 751 F.2d 241 (8th Cir. 1984) (similar); Wright v. Commissioner of Internal Revenue, 752 F.2d 1059, 1062 (5th Cir. 1982) (claim that tax returns violate the right against self-incrimination is frivolous); see also Allamy v. United States, 207 Fed. Appx. 7, at *2 (2d Cir. 2006) ("[A]rguments that the federal income tax is unconstitutional and that wages are not taxable income" have been "long-rejected"); Stearman v. Commissioner of Internal Revenue, T.C. Memo. 2005-39, 2005 WL 488646 (March 3, 2005), aff'd, 436 F.3d 533 (5th Cir. 2006).

Moreover, it is evident that Defendants' false statements concern the tax benefits to be derived from the plan. As Defendants' literature makes clear, their campaign includes "instructions for companies, workers and independent contractors on how to legally stop withholding, *filing and paying the tax.*" Schulz

Decl. at Ex. C., p. 3 (emphasis added). The obvious claimed benefit from participating in Defendants' plan is that individual income taxes need not be paid. Further, Defendants advise employers that they can "eliminate payment of 'matching' employment taxes (FICA, etc.)," id. at p. 7, another claimed tax benefit from participating in the plan.

The undisputed evidence further demonstrates that Defendants knew, or had reason to know, that their statements were false. See Estate Preservation Servs., 202 F.3d at 1102. "The 'knew or had reason to know' standard . . . includes what a reasonable person in the defendant's subjective position would have discovered." Estate Preservation Servs., 202 F.3d at 1103. The following factors are relevant in determining whether a defendant had the requisite scienter to violate § 6700: (1) the extent of the defendants' reliance upon knowledgeable professionals; (2) the defendants' level of sophistication and education; and (3) the defendants' familiarity with tax matters. Id.

There is a paucity of evidence, if any, suggesting that Defendants relied upon knowledgeable professionals. To the contrary, the evidence is that they relied on fringe opinions of known tax protestors whose theories have repeatedly been rejected by courts across the country. Several of the people on whom Defendants claim to rely have been convicted of tax crimes. Accordingly, this factor weighs in favor of finding the requisite intent.

Turning to the second and third factors, a search of case law reveals that Defendant Schulz has been litigating tax-related issues, and presenting similar arguments, for a long time. Schulz states in his Declaration #3 that he has extensive experience researching, writing briefs and arguing cases against "wayward government" in state and federal courts. Schulz Decl. #3 at ¶ ¶11-13. He specifically states he has significant experience researching and arguing tax-related issues. See generally id. Accordingly, Defendants have sufficient sophistication and education to be held accountable for their actions.[6]

Furthermore, Defendants have long been involved with these tax-related arguments. Defendant Schulz acknowledges that he is aware that numerous courts across the country have rejected attacks on the Sixteenth Amendment as improperly ratified. See Schulz Decl. #3 at ¶ 21. He also admits being aware of various Circuit Court of Appeals decisions rejecting the types of claims he makes in his materials. Id. at ¶¶ 23-24. In addition, the obligation to pay taxes is common knowledge. As the Second Circuit has stated, "'[t]he payment of income taxes is not optional . . . and the average citizen knows that the payment of income taxes is legally required'." Schiff, 919 F.2d at 834 (quoting United States v. Schiff, 876 F.2d 272, 275 (1989)). It is thus clear that Defendants actually knew, and certainly

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[6] Inasmuch as Schulz operates the two corporate entities, his knowledge may be imputed to them.

had reason to *know, their statements were* false. Defendant claims that it has not made any false or fraudulent statements because it provided a disclaimer in its materials. Defendants' materials state that:

> The materials presented herein contain legal content referencing and directly citing official U.S. tax statutes, tax regulations and federal court decisions regarding the limited authority of the U.S. Government to impose income taxes or withholding, and the legal duties and obligations (or lack thereof) that are allegedly imposed upon American business and the Americans that labor for them.
>
> **These materials are presented solely for educational purposes.**
> Although these materials may be used in attempting to secure and exercise one's Constitutionally protected Rights . . . We The People makes NO representation that there materials constitute legal advice and furthermore specifically encourages all workers and business owners to submit these materials to qualified legal counsel for review and advice.

Schulz Decl. #1 at Ex. C, p. 1.

The fact that Defendants purport to contain disclaimers in their materials is irrelevant. "[I]t is well established that a general, boilerplate disclaimer of a party's representations cannot defeat a claim for fraud." Dallas Aerospace, Inc. v. CIS Air Corp., 352 F.3d 775, 785 (2d Cir. 2003). Significantly, the purported disclaimer is insufficient for several reasons. First, nowhere do Defendants' materials disclaim the basis for their claims concerning the tax laws. Rather, Defendants merely "encourage" people to have the material reviewed by "qualified legal counsel." Second, although the materials are claimed to be presented only for education purposes, the materials affirmatively state that they are based on "legal content" "directly citing" various laws and court opinions. This gives the impression that the statements in the documents are based upon a sound legal foundation. Third, the purported disclaimer says that the "materials may be used in attempting to secure and exercise one's Constitutionally protected Rights." This could be construed as consistent with Defendants' position that the federal government may not impose an income tax because, among other arguments, the Sixteenth Amendment was not properly ratified. The "disclaimer," therefore, appears not to disclaim at all. Fourth, the materials provided by Defendants represent that "[t]he information is the result of research by tax attorneys and CPA's, a forensic accountant, a Special Agent of the Criminal Division of the IRS, a former Revenue Agent of the IRS, a former IRS Auditor and Fraud Examiner, a constitutional attorney and numerous expert tax law researchers and

certified paralegals. Schulz Decl. #1, at Ex. C, p. 5. This, again, detracts from the effectiveness of any purported disclaimer. Fifth, it appears that the "disclaimer" appears on Defendants' website, but it is not clear whether it appears on all the distributed materials. For example, no such disclaimer is included on the "Statement of Facts and Beliefs." Schulz Decl. #1 at Ex. B. The Court, therefore, finds the claimed "disclaimer" to be irrelevant. Thus, the second element has been satisfied.

c. Whether the False or Fraudulent Statements Pertained to a Material Matter

The next issue is whether these false statements pertained to a material matter. "Material matters are those which would have a substantial impact on the decision-making process of a reasonably prudent investor and include matters relevant to the availability of a tax benefit." Campbell, 897 F.2d at 1320. Statements that one need not file tax returns, that employers need not make withholdings, that "companies, workers and independent contractors [can] . . . legally stop withholding, filing and paying the tax," Gordon Aff. at Ex. 4, etc. clearly are relevant to the availability of the tax benefit and, thus, are material. Indeed, Defendants' statements appear to be the cause of its clients/members in failing to file tax returns or otherwise attempting to stop having taxes

withheld from their wages.[7] The third element has been satisfied.

d. Whether an Injunction is Necessary to Prevent Recurrence

The final element is whether an injunction is necessary to prevent recurrence.

Factors that a court may consider in determining the likelihood of future Section 6700 violations and, thus, the need for an injunction include: (1) the gravity of the harm caused by the offense; (2) the extent of the defendant's participation; (3) the defendant's degree of scienter; (4) the isolated or recurrent nature of the infraction; (5) the defendant's recognition (or non-recognition) of his own culpability; and (6) the likelihood

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[7] In support of this, the United States has provided copies of Defendants' "W e The People" tax form s that have been submitted to the IRS or their em ployers by various individuals. Gordon Aff. at Exs. 27, 28. Defendants also have submitted affidavits from Defendants' m em bers indicating that they have stopped paying taxes. See Deitz Decl. #1 at ¶ 13. Moreover, Defendants' own submissions reveal that people have acted upon Defendants' advice. See Schulz Decl. #1 at Ex. H, p. 2 ("Another case involves as group of 12 oil workers in Arkansas that recently sought to terminate their withholding agreements (W4s) *en masse*, by submitting WTP [W e The People] Form #1 to their com pany."). Other examples are listed in Schulz Decl. #1 at Ex. H ("[W]e are hearing daily about m any individuals that have filed the form s. . . .").

> that defendant's occupation would place him in a position where future violations could be anticipated.

Estate Preservation Servs., 202 F.3d at 1105.

(1) The Gravity of Harm

The gravity of harm is manifest. Defendants have embarked upon a nationwide plan to disseminate its materials to encourage people to stop having taxes withheld from their wages. Defendants' materials are intended to cause employees to believe that they need not pay an income tax and employers to believe that they need not withhold taxes from employees' wages or pay matching amounts. As previously noted, people are acting upon Defendants' materials by submitting forms supplied and created by Defendants in an effort to get their employers to stop withholding taxes from their wages. This is causing individuals to expose themselves to criminal liability. Defendants' conduct also is causing insufficient payments to the United States Treasury. Lastly, Defendants' conduct is causing the IRS significantly increased efforts at collecting taxes. Although the exact cost of Defendants' conduct appears to be unknown, the IRS estimates that it spends $1,607 in processing substitutes for returns for non-filers and, therefore, "[t]he estimated cost to the U.S. Treasury attributable to filing substitutes for returns for the 2991 unfiled returns equals

$4,806,537,"[8] excluding the time or expense IRS Revenue Officers must expend attempting to collect unpaid taxes from these individuals. Gordon Aff. at ¶ 40. Thus, the gravity of the harm is sufficient to warrant injunctive relief. See Raymond, 228 F.3d at 813 (evidence of the administrative burden placed on the IRC to investigate the tax evasion activities and engage in collection efforts establishes harm).

(2) The Extent of Defendants' Participation

This factor clearly weighs in favor of an injunction. Defendants are the primary figures in establishing the plan and encouraging other to participate in it. See Raymond, 228 F.3d at 814.

(3) Degree of Scienter

The degree of scienter element also weighs in favor of injunctive relief. As previously discussed *supra*, Defendants were well aware (or reasonably should have been aware) that their assertions have been consistently rejected by the courts. Nevertheless, Defendants set up their plan, disseminated it, and fully expected that people would buy, or freely download, their materials and use them. In fact, Defendants

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[8] As is explained below, the United States asserts that 997 of Defendants' customers have not filed federal tax returns for a period of three years, which represents more than 2,991 unfiled tax returns. Gordon Aff. at ¶ 38.

claim (which is supported by the evidence submitted by the United States) that people have used their forms to stop having taxes withheld from their wages. Thus, there is ample evidence that Defendants intended that their members and others would follow the instructions provided in the materials and submit the forms contained therein. Id.

e. Isolated or Recurrent Nature of the Infraction

The record evidence is that Defendants' conduct is not isolated. According to Defendants' own documents, Schulz "has now spoken to well over two thousand people as part of 'Operation Stop Withholding' and continues to be greeted by appreciative and attentive audiences everywhere." Schulz Decl. #1, at Ex. H, p. 1. Moreover, Defendants admit to having handed out "3,500 copies" of the "blue folder"[9] "at 37 meetings in 2003 and that [they] put the entire contents of the materials on the website for anyone to read, download and copy. . . ." Defs.' Responsive Stmnt. of Mat. Facts at ¶ 4. The United States submits evidence that "997 of defendants' customers . . . have not filed federal tax returns for a period of three years or more,

[9] The "blue folder" contains the materials prepared by Defendants and discussed throughout this opinion.

which represents more than 2991 unfiled tax returns." Gordon Aff. at ¶ 38. Accordingly, this factor also weighs in favor of issuance of an injunction. See Raymond, 228 F.3d at 814.

f. Defendants' Recognition (or non-recognition) of Their Own Culpability

Defendants express no recognition of their culpability. Despite the uniform rejection of their positions, they continue to maintain them and attempt to get others to adopt their views. As in Raymond, Defendants have "consistently held to their view that federal tax laws are unconstitutional and that the government has no authority to compel the payment of federal taxes." 228 F.3d at 814. Defendants also continue to claim that they may withhold money from the government until the government responds to its "petition for redress." Given Defendants' long-time pursuit of these goals, it is easy to conclude that they are likely to continue to engage in their conduct if not enjoined from doing so. Id. Indeed, Defendants' materials continue to be available via their website and the mails.

g. The Likelihood that Defendants' Occupation Would Place Them in a Position Where Future Violations Could Be Anticipated.

Lastly, although Defendants are not professional tax advisers, Defendants' own papers demonstrate that they spend a substantial amount of time, money, and effort promoting their plan. Their main purpose is to continue to disseminate their plan and encourage employees and employers alike to participate. It is a virtual certainty that, absent injunctive relief, future violations can be anticipated.

For the foregoing reasons, the Court finds that injunctive relief is warranted.

b. First Amendment

Defendants move to dismiss and otherwise defend this action on the ground that their speech is protected by the First Amendment. Defendants argue that their tax-related materials are discussions of the manner in which government is operated and, therefore, constitutionally protected. Defendants further claim that their speech constitutes the lawful exercise of the right to petition the government.

A very similar argument was presented to the Ninth Circuit in United States v. Freeman, 761 F.2d 549 (9th Cir. 1985). In that case, as here, it was alleged that the defendant "counseled violations of the tax laws at seminars he conducted." Id. at 551. "He urged the improper filing of returns, demonstrating how to report wages, then cross out the deduction line for

alimony and insert again the amount of the wages, showing them as 'nontaxable receipts.'" Id. The defendant claimed "he did nothing more than advocate tax noncompliance as an abstract idea, or at most as a remote act, and that the First Amendment necessarily bars his prosecution." Id.

The Ninth Circuit noted that:

> Words alone may constitute a criminal offense, even if they spring from the anterior motive to effect political or social change. Where an indictment is for counseling, the circumstances of the case determine whether the First Amendment is applicable, either as a matter of law or as a defense to be considered by the jury; and there will be some instances where speech is so close in time and substance to ultimate criminal conduct that no free speech defense is appropriate. . . .
>
> Where there is some evidence . . . that the purpose of the speaker or the tendency of his words are directed to ideas or consequences remote from the commission of the criminal act, a defense based on the First Amendment is a legitimate matter for the jury's consideration.

Freeman, 761 F.2d at 551. Where, on the other hand, there is evidence that the defendant

assisted in the filing of false returns, there is no First Amendment defense. Id. at 552. The Freeman court continued to note that:

> Though a statute proscribes certain speech, in this case counseling, the defendant does not have a First Amendment defense simply for the asking. Counseling is but a variant of the crime of solicitation, and the First Amendment is quite irrelevant if the intent of the actor and the objective meaning of the words used are so close in time and purpose to a substantive evil as to become part of the ultimate crime itself. United States v. Barnett, 667 F.2d 835, 842-43 (9th Cir. 1982); [United States v.] Buttorff, 572 F.2d [619] at 624 [(8th Cir. 1978)]. In those instances, where speech becomes an integral part of the crime, a First Amendment defense is foreclosed even if the prosecution rests on words alone.

Id.

The Second Circuit agreed with this line of reasoning in United States v. Rowlee, 899 F.2d 1275 (2d Cir 1990). In Rowlee, the Second Circuit noted that "'speech is not protected by the First Amendment when it is the very vehicle of the crime itself.'" 899 F.2d at 1278 (quoting United States v. Varani, 435 F.2d 758, 762 (6th Cir. 1970)). Similar to the Ninth Circuit's analysis in Freeman, the Second Circuit noted that:

> [C]onduct [is] not protected by the First Amendment merely because, in part, it

> may have involved the use of language. When speech and nonspeech elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.

Id. (internal quotations, alterations, quotations, and citations omitted). To the extent one comments "generally on the tax laws without aiding, assisting, procuring, counseling or advising the preparation or presentation of the alleged false or fraudulent tax documents," he does not violate the Internal Revenue Code. Id. at 1280. If, however, a defendant urges the preparation and presentation of false IRS forms with the expectation that the advice will be heeded, "the First Amendment afford[s] no defense." Id.; see also United States v. Konstantakakos, 121 Fed. Appx. 902 (2d Cir. 2005) (Noting that "it has long been established that the First Amendment does not shield knowingly false statements made as part of a scheme to defraud" and that "[n]o different conclusion is warranted simply because a knowing falsehood might be couched as an 'opinion'.").

Much of Defendants' conduct is protected speech. For example, Defendants are free to give speeches on whether the Sixteenth Amendment was properly ratified. The Court further understands that any injunctive relief will be a prior restraint. Nevertheless, as discussed, Defendants' scheme violates § 6700 of the

Internal Revenue Code. It is Defendants' "speech" (primarily its written materials) that facilitates the violation of § 6700.

To the extent Defendants' speech can be considered commercial speech,[10] it may be enjoined because the government may prohibit false, misleading or deceptive commercial speech, or speech that promotes unlawful conduct. United States v. Bell, 414 F.3d 474, 480 (3d Cir. 2005); United States v. Schiff, 379 F.3d 621, 626 (9th Cir. 2004).[11] Even assuming Defendants are not intending to profit from their services, they are offering a product that is based on false representations. Defendants seek to have people obtain and use copies of their tax avoidance program based upon false representations. Defendants sell numerous other products on their websites. Although Defendant may sometimes give their materials away for free, they do solicit a donation of $20 for each packet of materials they provide. Thus, if the materials are properly characterized as commercial

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[10] Several facts suggest that the speech may be considered commercial. This includes the following: (1) Defendants request a "donation" for each packet of materials they provide; (2) Defendants invite individuals to become members of their organization for a fee; Gordon Aff. at Ex. 20; (3) Defendants offer numerous items for sale, including videos, pamphlets, CD-ROMs, bumper stickers, brochures, flags, etc., see id.; (4) Defendants offer to sell a "customized legal opinion letter from an attorney or CPA" (noting "discounts are available for WTP Congress members"), Schulz Decl. #1, at Ex. C, p.11; and (5) Defendants advertise their program.

[11] The Court already has concluded that many of Defendants' statements are false.

speech, they may be enjoined and the First Amendment provides no defense.

Assuming Defendants' speech to be political in nature, it still may be enjoined. The First Amendment does not protect speech that incites imminent lawless action. Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Because Defendants are not merely advocating, but have gone the extra step in instructing others how to engage in illegal activity and have supplied the means of doing so (the "We The People" forms created by Defendants supported by a purported legal analysis of the tax laws), their speech may be enjoined. See United States v. Schiff, 269 F. Supp.2d 1262, 1280 (D. Nev.); see also United States v. Bell, 414 F.3d 474 (3d Cir. 2005); Raymond, 228 F.3d a5 815-16; United States v. Fleschner, 98 F.3d 155, 158-59 (4th Cir. 1996) (no first amendment protection where the defendants held meetings and collected money from attendees whom they instructed and advised to claim unlawful exemption and not to file income tax returns or pay tax on wages in violation of the law.); United States v. Moss, 604 F.2d 569, 571 (8th Cir. 1979); United States v. Kelley, 769 F.2d 215, 217 (4 Cir. 1985) ("The cloak of the First Amendment envelops critical, but abstract, discussions of existing laws, but lends no protection to speech which urges the listeners to commit violations of current law."); United States v. Burtoff, 572 F.2d 619, 624 (8th Cir. 1978) ("[T]he defendants did go beyond mere advocacy of tax reform. They explained how to avoid withholding and their speeches and explanation

incited several individual to activity that violated federal law. . . .").

As previously noted, the government has presented evidence that Defendants gave lectures, collected money in the form of donations and membership fees, provided forms with instructions on the preparation of the forms, and provided statements supporting their false legal beliefs/conclusions. See e.g. Gordon Decl. at Ex. 4 ("Our national campaign will include instructions for companies, workers and independent contractors on how to legally stop withholding, filing and paying the tax."); id. at Ex. 5 ("Many of you will discover the [employer] has been negligently advised by its so-called 'tax professionals' (attorneys and CPA's) who falsely claim 'the law requires the Entity to obtain your social security number' or 'the law requires the Entity to withhold' . . . ."); id. at Ex. 6 ("The Individual Income Tax is fraudulent in its origin and enforced without legal authority and without legal jurisdiction on most Americans and American entities. . . . Under U.S. tax law you may *legally* stop withholding taxes and employment taxes, plus legally stop issuing W-2 and 1099 forms to your workers and payees/contractors. . . . Eliminate payment of 'matching' employment taxes (FICA, etc.)"); id. at Ex. 8 ("You will utilize the [We The People] Forms to willfully and legally cease withholding, deducting and diverting any portion of a worker's . . . earnings to pay any tax, fee or other charge. . . ."); id. at Ex. 9 (a form created by Defendants and intended to be

signed by employees which states "I do not derive Subtitle A wage Gross Income . . . and my remuneration does not constitute wages for withholding purposes under IRC § 3401(a)(8)(A)(I)" and "I do not derive taxable income . . . from a taxable source. . . . I am outside the venue and the jurisdiction of 26 USC and 26 CFR," and "I incurred no liability for income tax imposed under subtitle A of the Code for the preceding year."); id. at Ex. 10 (a form created by Defendants and intended to be signed by employers which states "[i]t is the Entity's understanding that no American living in a state is 'subject to the jurisdiction of Congress,' generally speaking, unless one is a nonresident alien involved in immigration proceedings or nonresident employee. . . ."). The government also has supplied evidence of Defendants' clients or members using Defendants' materials to avoid tax withholdings, failing to file tax returns, or from otherwise refusing to pay money to the government. See Gordon Decl. at ¶¶ 33, 36, 37, 38 and Exs. 26, 27, 28. Because Defendants have actually persuaded others, directly or indirectly, to violate the tax laws, Defendants words and actions were directed toward such persuasion, and the unlawful conduct was imminently likely to occur, the First Amendment does not afford protection. That being said, any injunction must be narrowly drawn to separate protected speech from unprotected speech and to protect Defendants' First Amendment rights.

Accordingly, the Court rejects Defendants' First Amendment defense and denies their motion to dismiss in its entirety.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is DENIED and Plaintiff's Cross-Motion for Summary Judgment is GRANTED.[12]

Accordingly, it is hereby ORDERED that:

a. Defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them are hereby permanently enjoined from directly or indirectly:

1. engaging in activity subject to penalty under 26 U.S.C. § 6700, including the organizing, selling, participation in the organization, or participation in the sale of any plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any

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[12] Because Defendants submitted numerous materials outside of the pleadings in support of its motion to dismiss, the United States cross-moved for summary judgment, and Defendants have had an opportunity to reply to the cross-motion, Defendants' motion is properly considered as one made under Rule 56. See Fed. R. C iv. P. 12(b). Even without converting Defendants' motion, this matter is fully resolved upon Plaintiff's cross-motion for summary judgment.

material matter;

2. engaging in activity subject to penalty under § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;

3. promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

4. engaging in any other activity subject to penalty under IRC §§ 6700 or 6701 or other penalty provision of the Internal Revenue Code;

5. advising or instructing persons and/or entities that they are not required to file federal tax returns or pay federal taxes;

6. selling, distributing or furnishing any document, newsletter, book, manual, videotape, audiotape, or other material purporting to enable individuals to discontinue or stop withholding, or payment of, federal taxes;

7. instructing, advising, or assisting anyone to stop withholding or paying of federal employment or income taxes; and

8. obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS proceedings.

b. Defendants shall, at their own expense, notify all persons who have purchased or otherwise obtained their tax plans, arrangements, and materials of this Memorandum, Decision and Order and provide them with a copy of this Memorandum, Decision and Order;

c. Defendants shall produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all persons and entities who have been provided Defendants' tax preparation materials, forms, and other materials containing false information and otherwise likely to cause others to violate the tax laws of the United States;

d. Defendants, and anyone in active concert or participation with them, shall remove from their websites and all other websites over which they have control, all tax-fraud scheme promotional materials, false commercial speech concerning the internal revenue laws, and speech likely to incite others imminently to violate the internal revenue laws;

e. Defendants shall remove from its websites all abusive tax shelter promotional materials, false commercial speech, and materials designed to incite others to violate the law (including tax laws), and, for a period of one

year from the date of this Memorandum, Decision & Order, display prominently on the first page of the website an attachment of this Memorandum, Decision and Order;

f. Defendants shall immediately implement the terms of this injunction and provide the Court with an affidavit of compliance within twenty-one days of the date of this Decision and Order; and

g. This Court shall retain jurisdiction concerning Defendants' compliance with the injunctive relief.

IT IS SO ORDERED. Dated: August 9, 2007

Thomas J. McAvoy
Senior, U.S. District Judge

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

ORDER

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2nd day of May, two thousand and eight,

Before: Hon. Robert D. Sack,
Circuit Judge.

Docket No. 07-3729-cv

United States of America,

Plaintiff-Appellee,

v.

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

IT IS HEREBY ORDERED that Appellant's motion to (1) vacate the district court decision holding Appellant in contempt and; (2) temporarily stay the enforcement of that part of the contempt order directing Appellant to pay attorney fees and costs is DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
CLERK
by

/s/
Judy Pisnanont
Motions Staff Attorney

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v. 1:07-cv-0352

ROBERT L. SCHULZ;
WE THE PEOPLE FOUNDATION FOR
CONSTITUTIONAL EDUCATION, INC.; and
WE THE PEOPLE CONGRESS, INC.,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

By Decision and Order dated August 9, 2007, familiarity with which is presumed, the Court granted the motion of the United States seeking an injunction that, among other things, obligated Defendants to produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all persons and entities who have been provided Defendants' tax preparation materials, forms, and other materials containing false information and otherwise likely to cause others to violate the tax laws of the United States

(hereinafter referred to as "Paragraph C" of the injunction issued on August 9, 2007). United States v. Schulz, 529 F.Supp.2d 341 (N.D.N.Y. 2007). The United States of America now moves to enforce the injunction entered in this case and to hold Defendants in contempt.

Defendants may be held in civil contempt only if the United States establishes: (1) that the order that has not been complied with was clear and unambiguous, (2) the proof of non-compliance is clear and convincing, and (3) Defendants have not been reasonably diligent and energetic in attempting to comply. Chao v. Gotham Registry, Inc., 514 F.3d 280, 291 (2d Cir. 2008); see also United States of America v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 899 F.2d 143, 146 (2d Cir. 1990). Plaintiff need not show that Defendants' conduct was willful. Chao, 514 F.3d at 291.

Whether the Order is Clear and Unambiguous

The August 9, 2007 Order is clear and unambiguous. Defendants were, and are, obligated to provide the United States with the name, address, e-mail address, telephone number, and Social Security number of all persons and entities to whom Defendants' supplied their tax preparation materials, forms, and other materials, as discussed in the Court's prior Decision and Order. In their responsive papers, Defendants do not claim the order to be unclear or unambiguous. Accordingly, this element is satisfied.

Whether Proof of Noncompliance is Clear and Convincing

The proof of noncompliance is clear and convincing. The government maintains that it has not received the required information. Defendants do not deny the government's claim or otherwise create a triable issue of fact concerning their compliance. Accordingly, this element also has been satisfied.

Whether Defendants Have Been Reasonably Diligent and Energetic in Attempting to Comply

The last issue is whether Defendants have been reasonably diligent and energetic in attempting to comply. Defendants maintain that they are not obligated to comply because they have filed for rehearing *en banc* before the United States Court of Appeals for the Second Circuit, "no Mandate has been issued by the Clerk at the Second Circuit," "a court of appeals' judgment or order is not final until issuance of the Mandate," "the obligation of the parties become fixed only when the Mandate issues," "the court of appeals retains jurisdiction over the case until it [the mandate] issues, . . . the district court cannot proceed in interim," Dkt. No. 51, "[t]he Second Circuit's stay pending appeal, issued September 20, 2007, is inextricably intertwined with the appeal," "[t]he appeal is pending," and "[t]here is a stay pending." Dkt. No. 53.

Defendants' arguments are without merit. "[W]hile an appeal of an order or judgment is pending, the court retains jurisdiction to implement or enforce the order or judgment." In re Prudential Lines, Inc., 170 B.R. 222, 243 (S.D.N.Y. 1994); Suffolk Parents of Handicapped Adults v. Pataki, 1996 WL 285423, at *2 (E.D.N.Y. 19906); C.H. Sanders Co, Inc. v. BHAP Housing Development Fund Co., Inc., 750 F. Supp. 67, 69 (E.D.N.Y. 1990). "[T]he mere pendency of an appeal does not, in itself, disturb the finality of a judgment. . . . [T]he district court has jurisdiction to act to enforce its judgment so long as the judgment has not been stayed or superceded. . . . [A] district court . . . does retain jurisdiction to enforce the judgment." N.L.R.B. v. Cincinnati Bronze, Inc., 829 F.2d 585, 588 (6th Cir. 1987); see also In re Padilla, 222 F.3d 1184, 1190 (9th Cir. 2000) ("Absent a stay or supersedeas, the trial court also retains jurisdiction to implement or enforce the judgment or order but may not alter or expand upon the judgment."); In re Grand Jury Subpoena Duces Tecum, 85 F.3d 372, 37576 (8th Cir. 1996); Nicol v. Gulf Fleet Supply Vessels, Inc., 743 F.2d 298, 299 n.2 (5th Cir. 1984). "Where . . . the district court is attempting to supervise its judgment and enforce its order through civil contempt proceedings, pendency of appeal does not deprive it of jurisdiction for these purposes." Cincinnati Bronze, Inc., 829 F.2d at 588.

Here, on August 23, 2007, this Court denied Defendants' motion to stay enforcement of the injunction pending appeal. By Order

dated August 30, 2007, the Second Circuit Court of Appeals denied Defendants' motion to stay the full injunction, and instead granted their motion only with respect to Paragraph C. United States v. Schulz, 517 F.3d 606, 607 n.2 (2d Cir. 2008). Thus, Paragraph C initially was stayed. On February 22, 2008, the Second Circuit Court of Appeals issued its decision affirming this Court's August 9, 2007 Decision and Order. United States v. Schulz, 517 F.3d 606 (2d Cir. 2008). Significantly, the Second Circuit "vacate[d] the stay [it] previously imposed with respect to Paragraph C of the injunction, which directs defendants to provide to the government the names and contact information of the individuals who have received the tax materials." The Second Circuit held that:

> Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor the defendants' obligation under the injunction to provide a copy of the district court's order to recipients of the tax materials. Moreover, the district court found that the defendants' illegal actions were harming the government, which was not receiving required tax payments and was forced to expend resources to collect the unpaid taxes. Id. at 353. Requiring defendants to provide the identity and contact information of the recipients of the tax materials enables the government to monitor

> whether the recipients of defendants' materials are violating the tax laws. Thus, we find no abuse of discretion with respect to the district court's imposition of the reporting requirements in Paragraph C of the injunction.

Id. at 608.

In the concluding paragraph of its Opinion, the Second Circuit clearly and succinctly stated that "we **AFFIRM** the district court's judgment and **VACATE** the partial stay on the court's injunction." Id. Accordingly, contrary to Defendants' contention, there is no stay of Paragraph C of the Injunction and any pending appeal or motion for rehearing *en banc* does not divest this Court of jurisdiction to rule on the pending motion for contempt.

Similarly, the fact that the mandate has not yet issued is irrelevant. Just as the Second Circuit's August 30, 2007 order granting the stay as to Paragraph C was effective on August 30 (and not only upon issuance of a mandate), the Circuit's February 22, 2008 Order vacating the stay was effective on February 22. When the Court of Appeals wishes to stay the effective date of the its until issuance of the mandate, it does so explicitly. See e.g. United States v. Pepin, 514 F.3d 193, 209 (2d Cir. 2008) (expressly stating that "[t]he order of this Court staying the trial is vacated effective upon issuance of the mandate."); Chase Manhattan Bank, N.A., v. Tuner & Newall, PLC, 964 F.2d 159, 166 (2d Cir. 1992) ("Pending issuance of the mandate, we

stay the order, effective forthwith."); U. S. ex rel. Oliver v. Vincent, 498 F.2d 340, 346 (2d Cir. 1974) ("Effective upon the filing of the mandate the stay heretofore granted is vacated and the order of the district court is affirmed."). There is nothing suggesting that the effectiveness of the order of the Court of Appeals depends upon issuance of the mandate. "The effect of the mandate is to bring the proceedings in a case on appeal . . . to a close and to remove it from the jurisdiction of . . . [the Court of Appeals], returning it to the forum from whence it came." Ostrer v. United States, 584 F.2d 594 (2d Cir. 1978). Thus, the mandate has the effect of divesting the Court of Appeals of jurisdiction and returning jurisdiction to the District Court. Id. As noted, however, this Court never lost jurisdiction to enforce its prior order. Absent indication to the contrary from the Second Circuit Court of Appeals, the issuance (or non-issuance) of the mandate is irrelevant to the effective date of its orders. Accordingly, the order vacating the stay was effective February 22, 2008, and this Court has the power to enforce the injunction.

Most significant, however, is the fact that on April 7, 2008, Defendants filed a motion with the Second Circuit Court of Appeals expressly requesting a "stay of that part of the Court's February 22, 2008 Order which vacated the stay the Court previously imposed with respect to Paragraph C of the District Court's Injunction. . . ." By Order dated April 24, 2008, the Second Circuit denied that motion. Defendants, therefore, are on notice that the Court of Appeals would not stay its February 22, 2008

Order.[1] The filing of a petition for rehearing before the Circuit Court of Appeals did not serve to stay the February 22, 2008 Order.

For the foregoing reasons, the Court finds that Defendants have no justifiable basis for failing to comply with Paragraph C and that they have not been reasonably diligent and energetic in attempting to comply. To the contrary, Defendants have pointed their efforts toward non-compliance. The Court, therefore, finds that the United States has satisfied its burden and that Defendants are in contempt.

"Contempt sanctions may serve either or both of two purposes: 'to coerce the contemnor into future compliance with the court's order or to compensate the complainant for losses resulting from the contemnor's past noncompliance.'" International B'hood of Teamsters, 899 F.2d at 149, (quoting New York State National Organ. For Women v. Terry, 886 F.2d 1339, 1352 (2d Cir. 1989)).

> Compensatory sanctions should reimburse the injured party for its actual damages. . . .When imposing coercive sanctions, a court should consider (1) the character and magnitude of the harm threatened by the continued contumacy, (2) the probable effectiveness of the sanction in bringing

[1] The Court recognizes that the motion to stay was denied only four days before the date of this Order.

> about compliance, and (3) the contemnor's financial resources and the consequent seriousness of the sanction's burden. . . . The ultimate consideration is whether the coercive sanction-here, a fine-is reasonable in relation to the facts. That determination is left to the informed discretion of the district court.

Terry, 886 F2d at 1353.

At this point, coercive contempt sanctions are warranted. Considering: (1) Defendants' failure to comply since the Second Circuit's February 22, 2008 decision; (2) the Second Circuit's April 24, 2008 denial of Defendants' motion to stay enforcement of Paragraph C; (3) Schulz's September 4, 2007 declaration wherein he states that he would be in a position to comply with most of the requirements of Paragraph C by September 6, 2007, thereby demonstrating that he should be in a position to quickly comply with Paragraph C; (4) the gravity of the harm caused by non-compliance, as set forth in the Court's August 9, 2007 Decision and Order and noted by the Second Circuit in its opinion dated February 22, 2008, including exposing persons and entities to criminal liability for failure to comply with the tax laws, causing insufficient payments to be made to the United States Treasury, and causing the United States to continue to expend time and resources in

investigating Defendants and collecting taxes;[2] (5) the lack of any information concerning Defendants' financial resources; and (6) the fact that only a severe sanction is likely to encourage Defendants to come into compliance, the Court finds that coercive sanctions in the amount of $2,000.00 per day,[3] plus costs incurred by the United States in filing the instant motion are appropriate.

Accordingly, it is hereby ORDERED that:

1. Defendants are in contempt;

2. Unless Defendants fully comply with Paragraph C of this Court's August 9, 2007 Decision and Order on or before 4:00 p.m. on Monday, May 5, 2008, they will be sanctioned in the amount of $2,000 per day, retroactive to the date of this Order. Stated otherwise, the Court is affording

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[2] As noted in the August 9, 2007 Decision and Order, although the exact cost of Defendants' conduct appears to be unknown, the IRS estimates that it spends $1,607 in processing substitutes for returns for non-filers and, therefore, "[t]he estimated cost to the U.S. Treasury attributable to filing substitutes for returns for the 2991 unfiled returns [attributable to Defendants' customers] equals $4,806,537[.]"

[3] Defendants have not specifically opposed the amount of sanctions requested by the United States.

Defendants a grace period of seven days from today's date to comply with Paragraph C without being subjected to a $2,000 per day sanction. If, however, Defendants do not comply with Paragraph C by 4:00 p.m. on Monday, May 5, 2008, sanctions will accrue at the amount of $2,000 per day commencing on the date of this Order;

3. Regardless of the date Defendants comply with Paragraph C, they shall pay to the United States its costs incurred in connection with filing and prosecuting the instant motion. The United States shall promptly file an affidavit detailing its costs in this regard;

4. In the event Defendants fail to comply with Paragraph C on or before 4:00 p.m. on May 12, 2008, the United States may move on an expedited basis seeking additional coercive sanctions, compensatory contempt sanctions, and coercive incarceration;

5. On or before 4:00 p.m. on Monday, May 5, 2008, Defendants shall file with the Court, and serve on the United States, a declaration describing their compliance with Paragraph C.

IT IS SO ORDERED.

Dated: April 28, 2008

Thomas J. McAvoy
Senior, U.S. District Judge

Appendix E

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O'Hagan Wolfe
CLERK OF COURT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9th day of June, two thousand and eight,

United States of America,

Plaintiff-Appellee,

v.

ORDER
07-3729-cv

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

Appellant Robert L. Schulz having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe,
Clerk

By: /S/
Frank Perez, Deputy Clerk

Appendix F

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O'Hagan Wolfe
CLERK OF COURT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of August, two thousand and eight,

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United States of America,

Plaintiff-Appellant,

v.

ORDER
07-3729-cv

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

Robert L. Schulz having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe,
Clerk

By: /s/
Frank Perez, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DOCUMENT REJECTION ORDER

RE: United States of America vs. Robert L. Schulz, et al

CASE NUMBER: **1:07cv0352 TJM-RFT**

Papers Rejected:
Defendant Schulz's Request for Leave to file a Sur-Reply, etc.

ORDERED that the enclosed papers(s) in the above titled action have been rejected and returned herewith by the Court, for the following reason(s) listed below. Please read this list carefully to correct the mistakes in your papers. After you correct your papers, you may return them to the Clerk's Office for processing TOGETHER WITH THIS ORDER.

1. The clerk has been directed to return this document without filing by Order of the court.
2. Chambers has directed that these papers be returned and that no sur-reply will be permitted.

SO ORDERED,

/s/
Thomas J. McAvoy

DATED: July 25, 2007

Note: A copy of this Order has been served upon the parties to this action.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v. 1:07-cv-0352

ROBERT L. SCHULZ;
WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.;
And WE THE PEOPLE CONGRESS, INC.,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Defendants' move for reconsideration of the Court's August 9, 2007 Decision & Order that denied their motion to dismiss and granted Plaintiff's cross-motion for summary judgment. Defendants also move by Order to Show Cause seeking a stay of the judgment in this matter.

"The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." "Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995); see also Polance v. United States, 2000 WL 1346726, at *1 (S.D.N.Y. September 19, 2000); Califano v. United States, 1998 WL 846779, at *1 (E.D.N.Y. September 4, 1998). "The high burden imposed on the moving party has been established in order to dissuade repetitive arguments on issues that have already been considered by the court and discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court [and] to ensure finality and prevent the practice of alosing party examining a decision and then plugging the gaps of thelost motion with additionalmatters." Nowacki v. Closson, 2001 WL 175239, *1 (N.D.N.Y. Jan. 24, 2001) (Munson, J.) (internal citations and quotations omitted). Reconsideration "is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998); see also Polanco, 2000 WL 1346726 at *1 (quoting Schrader, 70 F.2d at 256)(Reargument is

> not a vehicle to "advance new facts, issues or arguments not previously presented to the court."). The Northern District of New York "recognizes only three possible grounds upon which a motion for reconsideration may be granted: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct clear error of law to prevent manifest injustice." Nowacki 2001 WL 175239, at *1 (quoting In re C-TC 9th Avenue Partnership, 183 B.R. 1, 3 (N.D.N.Y. 1995)).

U.S. v. Li, 2006 WL 2375475, at *1 (N.D.N.Y. 2006).

Upon reviewing Defendants' motion, the Court finds that reconsideration is not warranted. Defendants' motion consists of reassertions of the same arguments presented in connection with their motion to dismiss and their opposition to the government's cross-motion for summary judgment and general disagreements with the Court's conclusions. Defendants fail to identify any intervening change in controlling law, new evidence not previously available, or any need

to correct clear error of law to prevent manifest injustice. Accordingly, the motion for reconsideration is DENIED.

Because the motion for reconsideration is DENIED, the motion to stay enforcement of the judgment pending reconsideration also is DENIED. The Court sees no basis upon which the injunction should be stayed pending an appeal. Defendants have not identified irreparable harm absent a stay; the harm to the United States and the public will continue and possibly grow if a stay is granted; Defendants have not demonstrated a substantial possibility of success on appeal; and the public interest (preventing a fraud on the public) compels against a stay. In re All Funds in Accounts in Names Registry Pub., Inc. 58 F.3d855, 856 (2d Cir. 1995). Accordingly, the motion to stay enforcement pending appeal

is DENIED. Defendants' request to file approximately 1,400 pages in support of their motion for reconsideration also is DENIED.

IT IS SO ORDERED.

Dated: August 23, 2007

/S/
Thomas J. McAvoy
Senior, U.S. District Judge

Appendix I

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Before: Hon. Peter W. Hall, *Circuit Judge*

United States of America,

Plaintiff-Appellee,

v.

ORDER
07-3729-cv

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

IT IS HEREBY ORDERED that the motion is GRANTED only as to paragraph C of the District Court's order (requiring production of "identification information," etc. for the United States); deny as to remainder of District Court's order. The entire motion for a stay is referred to the next available motions panel.

For the Court:
Catherine O'Hagan Wolfe,
Clerk

By: /S/
Howard B. Zakai, Acting
Motions Staff Attorney

Aug. 30, 2007

Appendix J

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of September, two thousand seven,

Present:

Hon. Roger J. Miner,
Hon. Jose A. Cabranes,
Hon. Chester J. Straub,
Circuit Judges.

United States of America,

Plaintiff-Appellee,

v. 07-3729-cv

Robert L. Schulz, *et al.*,

Defendants-Appellants.

Appellants, *pro se* and through counsel, move for a stay of the district court order granting the Appellee's cross-motion for summary judgment and issuing an injunction, and to expedite the appeal. Upon due consideration, it is hereby ORDERED that, with respect to Paragraph C of the district court's order, reuiring Appellants to

produce to the Appellee a list "identifying by name, address, e-mail address, telephone number, and Social Security number, all persons or entities who have been provided [Appellants'] Tax Termination materials or any other similar materials." The motion for a stay is GRANTED. With resp3ect to the remaining portions of the district court order, it is hereby ORDERED that the motion for a stay is DENIED because Appellants have not demonstrated that they have a substantial possibility of success on the merits in their appeal. *See Hirschfield v. Board of Elections*, 984 F.2d 35, 37 (2d Cir. 1993). It is further ORDERED that the motion to expedite the appeal is GRANTED. The Clerk's Office shall issue a scheduling order, and this appeal will be placed on the next available calendar after the briefs are filed.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

By: _____/s/
Lucille Carr

Appendix K

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Before: Hon. Jon O. Newman Hon. Ralph K. Winter, Hon. Sonia Sotomayor, *Circuit Judges*

United States of America,

Plaintiff-Appellee,

v.

ORDER
07-3729-cv

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

IT IS HEREBY ORDERED that Appellant's motion to stay part of the court's order dated February 22, 2008; and to add transcript and decision to addendum to Petition for Rehearing *en banc* is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk

By: /S/
Judy Pisnanont, Motions
Staff Attorney

Apr. 24, 2008

APPENDIX L

[MANDATE]

United States Court of Appeals
For The
Second Circuit

JUDGMENT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 22nd day of February, two thousand eight,

Before: Hon. Jon O. Newman,
Hon. Ralph K. Winter,
Hon. Sonia Sotomayor
Circuit Judges.

Docket No. 07-3729-cv

United States of America,

Plaintiff-Appellee,

v.

Robert L. Schulz, We the People Foundation for Constitutional Education, Inc., We the People Congress, Inc.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is hereby ORDERED, ADJUDGED and DECREED that the judgment of said District Court be and hereby is AFFIRMED in accordance with the opinion of this court. The partial stay on the district court's injunction is VACATED; the pending motion requesting the court to take judicial notice of a petition for rehearing to the Supreme Court's order denying a writ of certiorari in *We the People Foundation, Inc. v United States,* 485 F.3d 140 (D.C. Cir. 2007), cert. denied, --S. Ct. --, 2008 WL 59413 (Jan. 7, 2008), as consideration of the petition for rehearing in that case in unnecessary to the disposition in this case.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
Clerk
By

/S/
Joy Fallek
Administrative Attorney

ISSUED AS MANDATE: AUG. 27, 2008

APPENDIX M

USCS Fed Rules Civ Proc R 56

Rule 56. Summary Judgment

(a) By a Claiming Party. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after:

(1) 20 days have passed from commencement of the action; or

(2) the opposing party serves a motion for summary judgment.

(b) By a Defending Party. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) Serving the Motion; Proceedings. The motion must be served at least 10 days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) Case Not Fully Adjudicated on the Motion.

(1) *Establishing Facts.* If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by

interrogating the attorneys. It should then issue an order specifying what facts--including items of damages or other relief--are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) *Establishing Liability.* An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) Affidavits; Further Testimony.

(1) *In General.* A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

(2) *Opposing Party's Obligation to Respond.* When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) When Affidavits Are Unavailable. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts

essential to justify its opposition, the court may:

(1) deny the motion;

(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

(g) Affidavit Submitted in Bad Faith. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

USCS Fed Rules App Proc R 41

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate.

(1) *On Petition for Rehearing or Motion.* The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending Petition for Certiorari.*

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

Sec. 6700 Promoting abusive tax shelter, etc.
(a) Imposition of penalty.

Any person who—

(1)(A) organizes (or assists in the organization of) –

(i) a partnership or other entity,
(ii) any investment plan or
(iii) arrangement, or
(iv) any other plan or arrangement or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale) –

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter, shall pay, with respect to each activity described in paragraph (1), a penalty equal to the $1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. For purposes of the preceding sentence, activities described in paragraph (1)

(A) with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1) (B) shall be so treated.

(b) Rules relating to penalty for gross valuation over-statements.

(1) Gross valuation overstatement defined. For purposes of this section, the term "gross valuation overstatement" means any statement as to the value of any property or service --

(A) the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and

(B) the value of such property or services is directly related the amount of any deduction or credit allowable under chapter 1 to any participant.

(2) Authority to waive. The Secretary may waive all or any part of the penalty provided by subsection (a) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(c) Penalty in addition to other penalties.

The penalty imposed by this section shall be in addition to any other penalty provided by law.

Sec. 6701. Penalties for aiding and abetting understatement of tax liability.

(a) Imposition of penalty.

Any person –

(1) who aids or assists in, procures, or advises

with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

(2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under subsection (b).

(b) Amount of penalty.

(1) In general. Except as provided in paragraph (2), the amount of the penalty imposed by subsection (a) shall be $1,000.

(2) Corporations. If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by subsection (a) shall be $10,000.

(3) Only 1 penalty per person per period. If any person is subject to a penalty under subsection (a) with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under subsection (a) with respect to any other document relating to such taxpayer for such taxable period (or event).

(4) Activities of subordinates.

(1) In general. For purposes of subsection (a), the term "procures" includes --

(A) ordering (or otherwise causing) a subordinate to do an act, and

(B) knowing of, and not attempting to prevent, participation by a subordinate in an act. **(2)Subordinate.** For purposes of paragraph (1), the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) Taxpayer not required to have knowledge.

Subsection (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) Certain actions not treated as aid or assistance.

For purposes of subsection (a)(1), a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) Penalty in addition to other penalties.

(1) In general. Except as provided by paragraphs (2) and (3), the penalty imposed by this section shall be in addition to any other penalty provided by law.

(2) Coordination with return preparer penalties. No penalty shall be assessed under subsection (a) or (b) of section 6694 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

(3) Coordination with section 6700. No penalty shall be assessed under section 6700 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

APPENDIX P

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:07-cv-352-TJM-RFT
	)	
ROBERT L. SCHULZ; WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.; and WE THE PEOPLE CONGRESS, INC.,	)	
	)	
Defendants.	)	

STATEMENT UNDER LOCAL RULE 7.1(a)(3) NORTHERN DISTRICT OF NEW YORK

Statement Of Material Facts As To Which The United States Contends There Is No Genuine Issue For Trial

1. In 1997 Robert L. Schulz organized the two We the People entities ostensibly for educational purposes.

2. Despite the organizations' stated

purposes, as chairman of We the People, Schulz has used the organizations to market a nationwide tax-fraud scheme designed to help customers evade their federal tax liabilities and to interfere with the administration of the internal revenue laws.[1]

3. Schulz started marketing a tax-fraud scheme he calls the "Legal Termination of Tax Withholding," on March 15, 2003, as part of "Operation Stop Withholding."[2]

[1]Schulz Decl. #1 ¶ 4, Exh. A; Schulz Decl. #2(2) ¶¶ 2-5 (Filed by Schulz in Case No. 1:06-mc-131); Schulz Decl. #2 ¶ 75-76; Astrup Decl. ¶¶ 75-76; Deitz Decl. #2 ¶¶ 75-76; Gordon Decl. ¶¶ 4-18, Exhs. 4-21; *United States* v. *Boos*, 83 A.F.T.R.2d (RIA) 584 (10th Cir. 1999).

[2]Schulz Decl. #1 ¶¶ 2-6, Exh. A; Schulz Decl #2 ¶¶ 75-76; Schulz Decl. #2(2) ¶¶ 2-5; Astrup Decl. ¶¶ 75-76; Deitz Decl. #2 ¶¶ 75-76.

4. With their tax-evasion materials, defendants also solicit sales of their other products and membership in their organization.[3] Schulz admits to having provided over 3,500 copies of his tax termination package in exchange for a $20 fee, which he calls a "donation," at seminars nationwide, and on the Internet.[4]

5. The crux of defendants' tax-evasion scam is that participants can "opt-out" of paying taxes — with defendants' help — based on several false, discredited premises, including: (1)

the income tax is voluntary, (2) the 16th Amendment was never ratified, and (3) U.S. citizens are not required to pay tax on domestic income.[5]

6. Schulz admits adopting these frivolous theories from two individuals, who he confirms have been subject to criminal and civil sanctions for advancing them.[6] Defendants' contribution is limited to selling the scheme as a how-to method for enabling customers to evade "withholding, filing, and paying [] tax" using "WTP Forms #1-10."[7]

7. As part of defendants' marketing ploy, they advertise the following benefits of their scheme to employers:

- "minimize company income tax reporting requirements to almost nothing."
- "instantly increase all of your workers' take home pay without affecting cash flow or profits."
- "eliminate payment of 'matching' employment taxes [contributions.]"
- "enjoy a significant competitive cost advantage over your competitors in direct labor & overhead costs."[8]

[3]Schulz Decl. #1, Exhs. B(2) (pp. 7-15, & 20), C (pp. 2 & 11); Gordon Decl. ¶¶ 4-18, Exhs. 4, & 20-21.

[4]Schulz Decl. #1 ¶¶ 2-16, Exhs. C, H, & I.

[5]Schulz Decl. #2(2) ¶¶ 19-25; Schulz Decl. #1 ¶ 5 Exhs. B (pp. 19-32, & 36-37), B(2) (p. 24), C (pp. 6-8), I (pp. 24); Schulz Decl. #2 ¶ 76; Gordon Decl. ¶¶ 4-18, Exhs. 4-22.

[6]Schulz Decl. #2(2) ¶¶ 19-25 (Schulz collects numerous court decisions rejecting the positions asserted by Benson and Becraft, from whom he took this idea); *see also United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (sustaining Benson's conviction for tax evasion); Gordon Decl. Exhs. 19, 23-25. *In re Becraft*, 885 F.2d 547 (9th Cir. 1989) (sanctioning attorney for asserting the "frivolous" argument that the "[16th] Amendment does not authorize a direct non-apportioned income tax").

[7]Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 4) & C; Gordon Decl. ¶¶ 10-29, Exhs. 5-20.

[8]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

8. Defendants further boast that their tax-evasion forms are the product of "tax professionals, including: attorneys, paralegals, CPA's, ... and numerous expert tax law researchers."[9] Along those lines, defendants challenge customers to "subject [their forms] for rigorous review,"[10] but no suggestion is made in the materials that the customers consult first with a tax advisor.

9. Defendants' claim that the instructions require a tax professional to review the scheme is a false statement. Only on their website do defendants warn that the materials are "educational," and "encourage" customers to submit the forms to "legal counsel for review."[11] Indeed, defendants' marketing materials go on to explain that "ent[ities] [have] been negligently advised by so-called 'tax professionals' [] who false claim that 'the law requires the Entity to

withhold.'"[12] Moreover, defendants offer forms and assistance — including threatening to sue an employer who withholds taxes — if the employer does not accede to the customers' demands.[13]

[9]Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 15) & C (p. 5); Gordon Decl. ¶ 17, Exh. 8.

[10]Schulz Decl. #1 Exh. B(2) (p. 15); Gordon Decl. Exh. 8.

[11]Schulz Decl. #1 Exh. C (p. 1, 6, & 10.)

[12]Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 20) & C (p. 58); Gordon Decl. ¶ 14, Exh. 5.

[13]Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 20-21, & 48-64) & C (pp. 11, & 49-58.)

10. For a $500 annual fee, defendants also offer to represent employers that "have ceased, or intend to cease earnings withholding of all federal taxes..." Defendants charge a $250 annual fee for individuals who agree to "stop filing federal tax returns and/or cease the payment of any alleged federal income taxes." Defendants contend that a customer' participation enables them to legally stop filing returns or paying taxes until defendants' questions are answered.[14]

11. Customers are introduced to the fraudulent scheme under two scenarios: (1) the employer and employee are using defendants' scheme in collusion, or (2) the employee-customer uses defendants' threatening forms to coerce the employer's participation.[15] In either case, defendants instruct customers to complete"WTP Form #1," for existing employees,

or "WTP Form #3," for new employees, in order to "legally terminate the existing W-4 agreement" to "stop federal and state withholding of income taxes."[16] Thereafter, defendants advise customers to file these documents *in lieu* of a Form W-4.[17]

12. Both WTP Form #1 and #3 are replete with false statements that are designed to convince customers — based on numerous frivolous claims — that they are not obligated to pay taxes.[18] On WTP Form #1, defendants willfully misread court decisions and restate out-of-context quotes to convince customers their position is justifiable. For example, defendants cite *United States v. Malinowski*[19] for the proposition that a company is obligated to honor an employee's *false* Form W-4, instead of what the case actually says: "Every employer who pays wages is required to withhold from the wages a tax." 347 F. Supp. 347, 352 (E.D. Penn. 1972), *aff'd* 472 F.2d 850, 873 (3rd Cir. 1973) (The Circuit Court went to state: "To urge that violating a federal law which has a direct or indirect bearing on the object of protest is conduct protected by the First Amendment is to endorse a concept having no precedent...") Moreover, Molinowski's motion for acquittal based on a First Amendment defense after filing a false Form W-4 in this criminal case was denied); Schulz Decl. #1 Exh. B(2) (p. 23.)

[14]Schulz Decl. #1 ¶ 4, Exhs. B(2) pp. 7-13, Exh. C (p. 5.); Gordon Decl. ¶¶ 24-30, Exhs. 17-21.

[15]Schulz Decl. #1 ¶ 4, Exh. B(2) (pp. 17-21); Gordon Decl. Exhs. 17-18.

[16]Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 17-19), & C (pp. 7-8); Gordon Decl. Exhs. 6-8.

[17]Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 19, 22, 25, & 30), & C (p. 8); Gordon Decl. Exhs. 5, & 9-10.

[18]Schulz Decl. #1 ¶ 4, Exhs. B (3-54), B(2) (pp. 19-30), & C; Gordon Decl. Exhs. 9 & 11.

[19]347 F. Supp. 347, 352 (E.D. Penn. 1972), *aff'd* 472 F.2d 850, 873 (3rd Cir. 1973).

13. In addition, the very next case defendants cite to claim that employers are not obligated to withhold taxes is *Holstrom* v. *PPG Ind.*, 512 F.Supp. 552 (W.D. Penn. 1981), but they fail to mention that Holstrom was not required to pay taxes based a treaty with Sweden, his country of residence — put simply, his exemption was not based on any spurious, false premise.[20] *Id.*

14. Moreover, on WTP Form #3, defendants advance the discredited "§ 861 Argument," by instructing customers that because they do not "derive income from a taxable source as defined ... 26 CFR 1.861-(f)(i)[i.e. foreign income]," they are not "engaged in a ... taxable activity."[21] Section 861 Argument proponents, using a tortured statutory-construction argument, conclude that the foreign-source income rules from § 861 somehow sharply limit the scope of § 61, which defines income as "income from whatever source derived" — to conclude that domestic-source income of U.S. citizens is not taxable.[22]

15. Next, defendants instruct customers to complete WTP Forms #2 and #8.[23] WTP Form #8 is an altered Form I-9, declaring that the customers' Social Security number cannot be disclosed.[24] The instructions accompanying the WTP Form #2 tell the employer to sign the form falsely declaring that the employer "made a reasonable effort to obtain [the worker's] social

[20] Schulz Decl. #1 ¶ 4, Exhs. B (3-54), B(2) (pp. 19-30), & C; Gordon Decl. Exhs. 9 & 11.
[21] Schulz Decl. #1 ¶ 4, Exhs. B (38-40), B(2) (p. 30), C (p. 14); Gordon Decl. Exhs. 11, 19, & 22.
[22] *United States v. Bell*, 414 F.3d 474, 475 (3rd Cir. 2005) (explaining the fallacy of the § 861 Argument); Gordon Decl. ¶¶ 28 & 31, Exhs. 19 & 22.
[23] Schulz Decl. #1 ¶ 4, Exh. B(2) (pp. 17 & 19); Gordon Decl. Exhs. 5-6.
[24] Schulz Decl. #1 ¶ 4, Exh. B(2) (p. 45); Gordon Decl. Exh. 16.

security number" by "request[ing] the worker (more than once) to disclose a Social Security number . . ."[25] In doing so, defendants have unquestionably instructed employers to falsify WTP Form #2 since the previous forms prevented the employee from disclosing their Social Security number, including the altered form I-9.[26]

16. At this point, defendants state that the customers are no longer obligated to have taxes withheld or file returns, and they supply additional threatening forms for submission to

employers that continue to withhold taxes.[27]

17. In his brief, Schulz continues his remonstrations regarding the purported legality of this program despite clear knowledge that it is false.[28] For example, in 2003, Schulz testified that "he advised [an employer] that his research showed that the [16th] Amendment had been fraudulently declared to have been ratified" during the criminal trial of an individual who was convicted after he stopped withholding tax from his employees' wages based on the same arguments.[29]

18. As recently as 2005, the District Court for D.C. clearly informed defendants that they do not have a "First Amendment right to withhold money owed to the government and to avoid governmental enforcement," but they continue these same discredited arguments in this matter. In that regard, defendants have unquestionably ignored each warning by continuing to falsely promote the legality of their scheme.[30]

[25]Schulz Decl. #1, Exh. B(2) (p. 27); Gordon Decl. Exh. 10. (The form also states that the individual is not liable for FICA taxes.)

[26]Schulz Decl. #1 ¶ 4, Exh. B(2) (p. 45); Gordon Decl. Exh. 18.

[27]Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 20, 48-64) & C (p. 8); Gordon Decl. Exhs. 5, 17-18.

[28]Schulz Decl. #2(2) ¶¶ 19-25; Gordon Decl. ¶¶ 6-9, & 32-34, Exhs. 3, & 21-25.

[29]*United States v. Simkanin*, 420 F.3d 397 (5th Cir. 2005). *See also* Gordon Decl. ¶¶ 33-34, Exhs. 19 & 24-25.

19. Moreover, during the course of the promotion defendants' customers have used their scheme for its intended purpose — (1) underpaying taxes, (2) stopping the filing of income tax returns, and (3) obstructing IRS collection and examination.[31]

20. The IRS conservatively estimates that defendants' scheme has cost the United States Treasury $4,806,537 for processing substitutes for returns for those customers that did not file returns.

21. This cost does not include the hours that IRS Revenue Officers will have to devote attempting to collect from defendants' customers who refuse to pay the amounts assessed by the IRS.[32]

[30]Schulz Decl. #2(2) ¶¶ 19-25, 50-57, & 80, Exh. H. *See also* Gordon Decl. Exhs. 2-3 (defendants also misrepresent other tax-fraud promoters as "tax experts."), & 19, 24-25.

[31]*Celauro v. United States*, 411 F. Supp. 2d 257 (E.D. N.Y. 2006); *Celauro v. United States*, 371 F. Supp. 2d 219(E.D. N.Y. 2005) (taxpayer submitted altered withholding agreement *in lieu* of a Form W-4); *Karkabe v. Comm'r*, T.C. Memo. 2007-115; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9; Gordon Decl. ¶¶ 35-40, Exhs. 26-28.

[32]Gordon Decl. Exhs. ¶¶ 34-40, Exhs. 25-29; Engel Decl. ¶¶ 3-6; Nelson Decl. ¶¶ 3-5; Weaver Decl. ¶¶ 3-6.

GLENN T. SUDDABY
United States Attorney

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)**Case No.1:07-**	
	)**CV-0352 TJM/RFT**	
Plaintiff	)	
	)	
v.	)	
	)	
ROBERT L. SCHULZ;	)	
WE THE PEOPLE FOUNDATION	)	
FOR CONSTITUTIONAL	) **Date: July 27, 2007**	
EDUCATION, INC.;	) **Time: 10:00 A.M.**	
WE THE PEOPLE CONGRESS, INC.	) **Ctrm:**	
	)	
Defendants	)	

DEFENDANTS' RESPONSE TO STATEMENT OF MATERIAL FACTS AND ADDITIONAL MATERIAL FACTS THAT ARE IN DISPUTE

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1. <u>Deny</u>.

Only one of the two entities, We The People Foundation for Constitutional Education, Inc., ("WTP Foundation") was organized by Defendant Robert Schulz ("Schulz") as a 501(c) 3 research and educational foundation. The other entity, We The People Congress ("WTP Congress") was organized by Schulz as a 501(c) 4 civic/political action organization. See Schulz Decl. #3 par 44, Exh. E.

2. Deny.

Neither Schulz nor the WTP Foundation or the WTP Congress have ever been in business for the purpose of marketing any products or services, much less a tax fraud scheme. The corporations are not-for-profit entities and recognized as such by the IRS. Defendants have no "customers," defined in Black's Law Dictionary, Fifth Edition as "One who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business (citations omitted). Ordinarily, one who has had repeated business dealings with another."

By citing and relying on *United States v Boos* (Pltf fn.1), the Government has apparently, out of ignorance, confused the WTP Foundation and the WTP Congress with another organization known simply as "We the People." The We the People organization referred to throughout *Boos* is unknown to Defendants and, according to *Boos*, was in existence in 1993, years before Schulz incorporated the WTP Foundation and the WTP Congress (1997).

The other references in Government footnote 1 refer to Schulz's March 15, 2003 letter to the Government, the content of the so-called "Blue Folder," and Schulz's 2003 Operation Stop Withholding speaking schedule that included meetings in 37 municipalities during which Schulz distributed 3500 copies of the Blue Folder, free of charge. See, for instance, Schulz Decl. 1, Exhibit C, which is a copy of the initial website article about WTP's campaign to stop withholding and the Blue Folder. It clearly makes the entire content of the Blue Folder available free of charge. See also Schulz Declaration #5, Exhibits A-M.

As plainly stated in the March 15, 2003 letter itself, and as argued in Defendants' pleadings, these materials were an outgrowth to the process of Petitioning the United States for a Redress of Grievances relating to violations by the United States of the war, tax, money and privacy clauses of the Constitution, not part of any tax fraud scheme. See Schulz Decl. #1 (par 3-17, Exhs.A-I), and Schulz Decl. #2 (par 3-92, Exhs. A-ZZZ, particularly par 75-75, Exhs. EEE-GGG.

3. Deny.

"Legal termination of Tax Withholding For Companies, Workers and Independent Contractors" is neither a tax-fraud scheme, nor is it marketed.

"Legal termination of Tax Withholding For Companies, Workers and Independent Contractors" is the label Schulz placed on what the United States is calling an abusive tax shelter and what Defendants have referred to in their pleadings as the "Blue Folder."

Defendants did not "market" the Blue Folder, nor does the content of the Blue Folder constitute a "tax-fraud scheme". Rather, the Folder contains speech, (albeit highly offensive to the government,) integral to the claim and exercise of protected First Amendment Rights.

The meeting halls where meetings were held in 2003 to distribute the Blue Folders were not markets set up for the selling and buying of the Blue Folders – **the Blue Folders were given away at no cost.** No money changed hands for the Folders. Also, Defendants deny their website has been a market for the selling and

buying of the Blue Folder – the Folders are given away on the web site. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

As argued in Defendants' pleadings, these materials were distributed free of charge, except for a nominal donation of $20 from anyone who for any reason could not download and print the material from the website where it was posted for everyone to download and print free of charge. The $20 donation was to cover the cost of copying and mailing the Blue Folder with its voluminous contents. As argued in Schulz's pleadings, anyone not able to afford the recommended $20 donation were noticed to let the organization know and the organization would waive the donation for copying and mailing the Blue Folder. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

4. <u>Deny</u>.

Defendants have never provided "tax evasion materials," nor does the Blue Folder "solicit sales of other products."

Rather, as the March 15, 2003 letter to the United States says (Schulz Decl. #4, par 12 Exh. I), by participating in Operation Stop Withholding, Defendants, in distributing the Blue Folders, and those individuals who may have used the Forms in the Blue Folder to assist them in terminating withholding were all participating in the process of Petitioning the United States for Redress of various constitutional torts.

For instance, the Blue Folder has always included a copy of the STATEMENT OF [538] FACTS AND BELIEFS

REGARDING THE INDIVIDUAL INCOME TAX, which corresponded to the 538 questions that have not been answered even though they were included in the Petition for Redress served on the United States on March 16, 2002 (Schulz Decl. # 4, par. 6 and Exh. C) and were based entirely on the answers provided by tax professionals under oath at the Truth in Taxation Hearing (Schulz Decl. #4, par. 7 and Exh. D).

Schulz has never admitted to "having provided over 3,500 copies of a "tax termination package" in exchange for a $20 fee."

First of all, the words "tax termination package" are nowhere to be found in the Blue Folder or on the website's articles about the Blue Folder. The United States has admitted this. (Brief at 19).

In addition, Schulz has repeatedly said in his pleadings that he handed out the 3,500 copies **for free** at 37 meetings in 2003 and that he put the entire contents of the material on the website for anyone to read, download and copy, without charge. In addition, Schulz has repeatedly said in his pleadings that if someone could not, for any reason, access the material from the website and wanted Schulz to mail a copy of all the material, Schulz would copy and mail the material, asking for a nominal donation of $20 to cover the cost of copying and mailing the voluminous material. Finally, Schulz has repeatedly said in his pleadings that if anyone wanted Schulz to copy and mail the material but could not afford to send a donation, Schulz would send the material anyway. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

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Everything Defendants have been engaged in since 1999 has been directly related to Defendants' efforts to obtain a response from the Government to Defendants' Petitions for Redress of Grievances and to "institutionalize citizen vigilance" of Government's actions (i.e., comparing Government's actions with the requirements of the Constitution and Petitioning the Government for a Redress of constitutional torts). Schulz Decl. #2 par 3-92, Exhs. A-ZZZ.

For educational purposes only, Defendants make copies of their work available to People. In doing so, Defendant's policy has always been to make the educational product available to anyone and everyone free of charge whenever possible by posting it on the website for anyone to see and download. Where that is not possible, as with very large electronic files such as the record of the two-day Citizen's Truth in Taxation Hearing held in Washington DC in February of 2002, or Video-tape records of our conferences at the National Press Club in DC, or the 400 MB "Analysis of the Federal Income Tax", Defendants request a donation to cover their costs of preparing and shipping the material, **never to make a profit or for economic gain.** In addition, Defendants' policy has always been to provide its material to anyone, free of charge, if the person simply tells Defendants he/she can't download the material and does not have the money for a donation.

The Government's averred statements of fact claiming that Schulz sold thousands of copies of the Blue Folder, and further admitted to such, are patently inaccurate and appear to have been made to solely to deceive the Court in an attempt to paint

Defendants with a commercial motive. Schulz Declaration #5, Exhibits A-M.

5. Deny.

Defendants' Blue Folder is not a tax evasion scam. Nor does it offer help to people to "opt out" of paying taxes. The Blue Folder clearly instructs workers and the companies that they can legally "opt out" of **withholding**, not **taxes**. These are two entirely separate things. The United States admits the Blue Folder is labeled "Legal Termination of Tax **Withholding** For Companies, Workers and Independent Contractors," and that the Blue Folder is part of Defendants' "Operation Stop **Withholding**." (Defts emphasis). Gordon decl., par. 10.

The Blue Folder offers information on how to **legally** stop wage **withholding** based on black letter law. For instance, the following sections of the law are relied on and cited throughout the materials in the Blue Folder. Operation Stop Withholding rests squarely and primarily on the following sections of the law; all other arguments in the Blue Folder are less relevant, although believed to be accurate and included in the Blue Folder as additional statements of fact and belief that the United States has refused to respond to, and included in the material to be subjected to a "rigorous review" by the workers and the Entities and their tax professionals, including CPA's, attorneys and accountants.

In fact, the truth is, the "crux" of Defendant's offensive speech is not that "participants" can "opt-out" of "paying taxes", but rather that workers can exercise their Rights as explicitly provided by U.S. law and legally

terminate their **voluntary** wage withholding agreements (See 26 USC 3402(p)-1 below) and legally work without such an agreement. Furthermore, in no event has any such "participant" ever received Defendants' personal assistance in exercising such Rights. Schulz Decl. #6, Exhibit A, par. 2p, WTP Form 11; Gordon Decl. Exhibit 27, Item 2, Gordon Decl. Exh. 8.

"26 CFR Section 31.3402(p)-1 Voluntary Withholding Agreements.

(a) *In General.* An employee and his employer **may** enter into an agreement under section 3402(b) to provide for the withholding of income tax ...

(b) *Form and duration of agreement*...an employee who **desires** to enter into an agreement under section 3402 (p) shall furnish his employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding....

(d)(iii)(2)...**either the employer or the employee may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other**..." (Emphasis added by Defendants).

What Defendants say in the Blue Folder about the 16th Amendment and the liability of most Americans to pay an un-apportioned tax on their labor is not false. Those statements regarding the "16th Amendment," "liability" and "Section 861" were based on the

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STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX, which STATEMENT was included in the Folder. Those 538 statements of fact and belief directly corresponded to the 538 questions that have not been answered by the United States even though they were included in the Petition to the United States for Redress of Grievances that was served on the United States on March 16, 2002 (Schulz Decl. # 4, par. 6 and Exh. C); they are based entirely on the answers provided by tax professionals under oath at the Truth in Taxation Hearing. Schulz Decl. #4, par. 7 and Exh. D, Transcript. See also paragraph 8 below.

The questions/facts regarding the ratification of the 16th Amendment are included in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Sixth Belief", paragraphs 1-119. Nowhere in American history or jurisprudence have said questions been answered except by Bill Benson in his two volume research report, "The Law That Never Was" and at the two-day Citizens' Truth in Taxation Hearing in Washington DC on February 27-28, 2002 by a panel of experts including constitutional attorney Lowell Becraft, former IRS Special Agent Joseph Banister and Bill Benson. Nowhere in American jurisprudence have said facts been refuted.

The questions/facts regarding "Section 861" are found in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Ninth Belief", paragraphs 1-16. Nowhere in American history or jurisprudence have said questions been answered except by Larken Rose in his research report, "Taxable Income." (Schulz Decl #10, Exhibit A). Nowhere in American jurisprudence have said facts been formally and specifically been refuted.

The questions/facts regarding "Liability" are found in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Second Belief", paragraphs 1-82, and under the "Third Belief," paragraphs 1-45, and under the "Fourth Belief," paragraphs 1-23, and under the "Seventh Belief," paragraphs 1-42, and under the "Eighth Belief," paragraphs 1-23, and under the "Tenth Belief," paragraphs 1-24. Nowhere in American history or jurisprudence have said questions been answered, except by various tax professionals at the Citizens' Truth in Taxation Hearing in Washington DC on February 27-28, 2002. The United States has refused to answer said questions.

The Blue Folder is pure political speech and is inextricably linked to Defendants' First Amendment Petitions for Redress of Grievances. See Schulz Decl. #1 par 3-17, Exhs.A-I., Schulz Decl. #2 par 3-92, Exhs. A-ZZZ and Schulz Decl. #3 par 3-93, Exhs A-Z.

6. <u>Deny</u>.

Schulz has not admitted to adopting any frivolous theories -- to the contrary, Schulz and thousands of others have repeatedly asked the Government to officially answer the questions regarding such "theories" in their First Amendment Petitions for Redress. The questions/facts presented by Defendants in the Blue Folder come from established tax professionals, including currently licensed attorneys, and certainly do not rise to the level of frivolity. If anything, it is the Government's well-worn, one-size-fits-all retort that virtually any (and every) potent legal argument put forth questioning the Government's authority to impose an income tax upon average Americans be

characterized as "frivolous," is itself frivolous and should not be entertained by this Court. See paragraph 8 below.

Contrary to the assertion by the United States, Bill Benson was not subject to criminal sanctions for raising his questions regarding the ratification of the 16th Amendment. In fact, Mr. Benson was prevented from entering into the record and showing his jury his evidence regarding the fraudulent ratification of the 16th Amendment. *U.S. v. Benson*, 67 F.3d 641 (7th Cir. 1995).

Defendants do not have "customers" and are not in business to "sell" anything. Defendants ask workers and companies to subject the contents of a Blue Folder to a "rigorous review" by their tax professionals (CPAs, attorneys, accountants, etc.) for the purpose of determining accuracy. Schulz Decl #6, Exh. A, par. 2p,form 11; Gordon Decl. Exh 27, Item 2.

With respect to *In re Becraft* proffered by Plaintiffs as factual evidence of frivolity, the 9th Circuit Court of Appeals conclusion regarding the 16th Amendment flies in the face of the fact that numerous (and <u>never overturned</u>) Supreme Court decisions hold the direct opposite of that cited by the Plaintiffs in Footnote 6. Specifically, the Supreme Court has ruled repeatedly that "the provisions of the 16th Amendment conferred no new power of taxation" (*Stanton v. Baltic Mining*, 240 US 103 (1916)) and that the income tax is constitutional solely because it is an *indirect excise* tax, and therefore properly not subject to apportionment (*Brushaber v. Union Pacific R.R.*, 240 US 1 (1916)). Defendants deny there is no controversy regarding these critical facts.

See Schulz Declaration #2, Exhibits III-KKK and Schulz Decl. #8, Exhibits A-F.

The Blue Folder is pure political speech that has always been inextricably linked to Defendants' First Amendment Petitions for Redress of Grievances. See Schulz Decl. #1 par 3-17, Exhs.A-I., Schulz Decl. #2 par 3-92, Exhs. A-ZZZ and Schulz Decl. #3 par 3-93, Exhs A-Z.

7. Defendants Deny in part, admit in part.

Defendants' Blue Folder and its statements do not "market" or "advertise" an abusive scheme as implied by the United States. The Blue Folder presents workers and companies with information they most likely did not have regarding the voluntary nature of Withholding Agreements and their Rights as expressly provided by U.S. law. Defendants recommend throughout the material that should the workers and Entities decide claim and exercise their constitutional and statutory Rights to end withholding by using the material, the workers and companies should submit the information to a rigorous review by their tax professionals (CPAs, attorneys, accountants, etc.). Schulz Decl. #6, Exh. A, para. 2 c-q, Exhibits C-Q.

Defendants do list certain obvious benefits to the companies (Exh. D) if they were able to stop withholding pursuant to the exercise of their Rights as provided by U.S. law.

8. Deny.

Defendants have never had or offered any "tax-evasion forms." Defendants' Blue Folder recommends workers and companies take the **withholding**

information in the Folder to their tax professionals to legally stop withholding, not to evade taxes. Schulz decl #6, Exh A, par 2c-q, Exhibits A-Q; and Gordon decl. Exhs 4-18, 27 Item 2.

In fact, Defendants' Blue Folders correctly reports that, "The information is the result of research by tax professional: attorneys, paralegals, CPA's, a forensic accountant, a Special Agent of the Criminal Investigation Division of the IRS, a former Revenue Agent of the IRS, a former IRS Auditor and Fraud Examiner, a constitutional attorney and numerous expert tax law researchers." Gordon Decl. Exh. 8.

In fact, the Defendants' Petition for Redress of Grievances regarding the fraudulent origin and illegal operation and enforcement of the federal income tax system included 538 Statements of Facts and Beliefs regarding the income tax laws. Schulz decl. #4, par 6, Exh C.

The United States first agreed but then reneged on its agreement to answer the questions. Those very questions were then put to and answered under oath by the following group of tax professionals:

Constitution and Tax Attorney Lowell Becraft

Constitution and Tax Attorney Jeffrey Dickstein

Tax Attorney and former IRS Counsel Paul Chappell

Tax Attorney Robert Bernhoft

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Tax Attorney Noel Spaid

CPA and former IRS Special Agent and CPA Joseph Banister

CPA and former IRS Fraud Examiner and Auditor Sherry Peel Jankson

Former IRS Revenue Agent John Turner

Forensic Accountant Vicki Osborn

Certified Paralegal Lynda Wall

Former Illinois Revenue Agent and 16th Amendment Ratification Expert William Benson

Constitution and Tax Law Researcher Irwin Schiff

(See Schulz Decl. 2, par. 60, Exhibit TT and Schulz Decl 4, par. 7, Exh D)

Defendants' Folder does not include a "challenge." It includes a firm "request" that the company "subject" the information to a "rigorous review." Gordon Dec., Exh. 8. It also includes a request that the workers and the Entities subject the material to a rigorous review, obviously by "tax professionals (CPA, attorney, accountant, etc.)." The forms clearly have the worker saying to the company, "Please share my findings with your tax professionals (CPA, attorney, accountant, etc.)" Schulz Dec. 6, Exh A, par. 2p,form 11; and Gordon Decl. Exh 27, Item 2.

Defendants obviously could not order the company to do anything else. By "rigorous," Defendants obviously meant the review should be by tax advisors due to the nature of the subject and that the review should be "severe, exact, strict, harsh, scrupulously accurate, precise review that allowed no abatement or mitigation." That's the meaning of the word (Webster's Dictionary).

9. <u>Deny</u>.

Defendants can't "require" a tax professional to review the material. Defendants can only recommend the workers and the entities subject the material to a rigorous review, obviously by "tax professionals (CPA, attorney, accountant, etc.)" due to the nature of the subject. Schulz Decl. #6, Exhibit A, par. 2p,form 11; Gordon Decl. Exhibit 27, Item 2, Gordon Decl. Exh. 8.

Not only is there a warning and disclaimer on the website, a warning and disclaimer is sent along with every copy of the Blue Folder that anyone asks be mailed to them. (See Schulz Declaration #5, par. 11-12 and Exhibit H and I).

While the Blue Folder does not "market" anything, it does caution the reader against less than rigorous reviews by "incompetent tax professionals or incompetent IRS employees" that may incorrectly claim the law "requires" the Entities to withhold. Withholding *is* voluntary and either party *may* terminate an existing withholding agreement. See paragraph 5 above. See also Schulz Declaration #6, Exh. A, par 2 c-q and Gordon Declaration Exhibit 27, Item 2.

Defendants have not offered to sue anyone, much less "sue an employer who withholds taxes if the employer does not accede to the customers' demands." Nowhere in Defendants' Blue Folder do Defendants offer to sue anyone nor do they make any offer of assistance to do so.

The Worker that decides to submit WTP Form 1 in its entirety to his company says, at the end of the Form, "Should the Entity decide to continue to deprive me of my personal property (pay) for any reason other than a judicial order issued by a court of competent jurisdiction, I will pursue all available remedies to protect my rights and my property." Schulz Decl. #6, Exhibit A, par. 2f, Exh. F; and Gordon Decl. Exh. 9.

The Worker that elects to submit form #9 in its entirety to his Entity says in the conclusion, "The Entity has deliberately and intentionally ignored my previous demands. The Entity continues to unlawfully take amounts from my pay based on misinterpretation of federal and/or state law by Entity's incompetent employees, officers, agents and/or the Entity's tax professionals (attorneys and CPA's). When, after twenty (20) days from the date of this FINAL NOTICE AND DEMAND, the Entity fails to provide me a full pay check (less my voluntary deductions for which I have given written consent) for labor or services rendered, I reserve the right to seek a lawful process for review and remedy." Schulz Decl. 6, Exh. A, par 2n, Exh. N and Gordon decl., Exh 26, Form 9, Conclusion. A "lawful process" would include taking the matter to the State Labor Board.

10. Deny.

Defendants have never charged any company or worker a fee to represent them in anything, much less a matter involving withholding, and the United States knows any such an assertion is patently inaccurate.

For a brief period of time in early 2003 (less than 30 days) Defendants entertained the idea of creating a Legal Defense Association modeled after the Home Schooling Legal Defense Association. In fact, the organization was never activated and no such fees were ever retained by Defendants. See Schulz Declaration #5, Exhibit L.

It is common knowledge that the United States uses the threat of audits and other forms of harassment and intimidation by the IRS to control and punish companies and workers who challenge its behavior or who do not otherwise "toe the line." It is common knowledge that most companies and workers (like home-schoolers before 1980) have such a fear of the Government that they would rather give up their Rights than have the Government retaliate against them for doing anything the Government disapproves of, even if all the company and worker were doing was claiming and exercising an unalienable or statutory Right.

It is common knowledge that most companies and individuals (and home schoolers before 1980) do not have the resources or the courage to stand up to the Government to defend their Rights.

With this knowledge and belief, and based on the original intent, history, success and model of the

Home Schoolers Legal Defense Association, Defendants briefly advanced the idea of a Right to Petition Legal Defense Association. The LDA would consist of attorneys and paralegals and support personal who would be on staff or under retainer across the country, available to assist anyone being retaliated against by the Government for claiming and exercising the Right to Petition Government for a Redress of **any constitutional tort, tax related or otherwise.** Defendants prepared a standard LDA agreement with a notice that **only if 10,000 applications** were received Defendants would Defendants activate the LDA. Defendants never activated the LDA. Defendants are not in receipt of any LDA Application fees. **Application to the LDA was free**. See Schulz Decl #5, Exhibits A and L.

Defendants do not have "customers." Never did Defendants contend that participation in the LDA **enables** the participant to legally stop filing returns or paying taxes until the defendants' questions were answered.

Instead, as the language of the model LDA Agreement clearly stated: membership in the LDA would be open to anyone who has Petitioned the Government for Redress of a constitutional tort and has decided to retain his money until the Grievance is Redressed **because the Government has refused to respond to the Petition for Redress**; and, the LDA would, on a **best-efforts basis** represent the member in administrative and/or legal proceedings, with no guarantees of success. Schulz Decl. #5, Exhibit L.

11. Deny.

Defendants have no customers.

Per the excruciatingly plain language of 26 CFR 31.3402(p)-1, "Voluntary withholding agreements", either a worker or a company may legally terminate a voluntary withholding agreement at any time upon notice to the other party. The mere fact that the WTP forms provide sufficient information about the law that enables both parties to freely execute the termination of such an agreement without fear of breaking the law can hardly be labeled a "collusion," much less an illegal "scheme". The forms for workers provide a tangible, practical means for them to convey proper legal notice to companies to terminate their voluntary withholding agreements as provided by law. The forms for companies likewise provide them with optional documentation regarding the legal basis for their decision to honor a worker's withholding termination request as well as their legal status with regard to any potential obligations as a "withholding agent". All of this information and documentation can be used in the future, by either workers or companies against any potential harassment by IRS or DOJ officials who themselves, remain ignorant about the content of the law.

To the extent a company and its tax professionals actually review the applicable U.S. laws regarding voluntary withholding, it should view a worker's request to terminate, or work without, a voluntary W-4 withholding agreement with no more terror or "threat" than an invoice received from one of its suppliers or vendors.

As to using the Forms "*in lieu* of a W-4", it can hardly be improper for a worker to advise a company about his or her legal Rights using a WTP Form when the law explicitly makes withholding agreements using the W-4 **voluntary** for average American workers (*see again,* 26 CFR 31.3402(p)-1). There is no legal requirement to file a W-4.

12. Deny.

Defendants have no customers. Nor does the Blue Folder have any false statements. Above all, the Blue Folder is replete with requests of the Entity to have the statements thoroughly reviewed by competent professional for accuracy, including:

- a request to the Entity for a "rigorous review." (Schulz dec. 6, Exh. A: par. 2, Exh C), and
- a request from the worker, submitted to the Entity, to "please share my findings with your tax professionals (CPA, attorney, accountant, etc.)." (Schulz decl. 6, Exh. A: par. 2, Exh P, Form 11, page 1), and
- a request from the worker to the Entity to secure written verification from the government of the section of the Code that authorizes the United States to direct the Entity to take and divert to the United States from the worker's pay without the worker's consent. (Schulz decl. 6, Exh. A, par. 2: Exh N, form 9, page 8-9; Exh O, form 10, page 7-8), and
- a final request from the worker to the Entity, "I strongly urge you to share this information and my entire file pertaining to the non-consensual taking from pay with your legal counsel."

(Schulz decl. 6, Exh. A, par. 2: Exh Q, form 12, page 2).

Form #1 and Form #3 clearly begin by quoting black letter law **that the United States has not denied or refuted**, including, but by no means limited to 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the Entity can terminate a withholding agreement by simply notifying the other party, 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and Entity required for withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required), 8 USC 1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number).

Defendants have not "willfully misread" or misquoted *U.S. v. Malinowski* 347 F. Supp. 347, 352. Nor have Defendants quoted *Malinowski* for the proposition asserted by the United States. Defendants have quoted *Malinowski* for the proposition (as highlighted in the quote), that is, a Company is not authorized to dishonor a workers claim.

The quote by the United States from the Circuit Court in *Malinowski* is irrelevant to the facts and circumstances of this case and may have been intended to mislead the Court. Defendants are certainly not urging anyone violate a federal law. Defendants, are urging workers and companies, as part of a process of petitioning the Government for a Redress of constitutional torts, to **legally** terminate their voluntary withholding agreements – that is, that they subject the information to a rigorous review by their tax professionals for compliance with the law.

Additionally, although Defendants do not necessarily oppose the conclusion that withholding bona fide taxes as a *political* expression against government *policy* finds no protection from the First Amendment, Defendants strongly oppose any proposition that citizens lack a fundamental Right to withhold taxes to secure Redress to cure *constitutional torts*. Indeed this is the very controversy at the heart of the *We The People* case before the DC Circuit and an underlying issue in this case; the issue has never been explicitly addressed by any federal court. [11]

13. Deny.

Defendants did not misquote *Holstrom*, or willfully mislead. The relevancy of *Holstrom* pales in the light of the statutes identified in paragraphs 5 and 10 above which explicitly provide the legal authority for workers to terminate their voluntary withholding agreements and would, in any event, be determined during the recommended rigorous review by the tax professionals.

14. Deny.

Defendants have no customers.

The relevancy of the Form's mention of 26 CFR 1.863-1(c) **and** 26 CFR 1.861-(f)(i) pales in the light of the statutes identified in paragraphs 5 and 10 above and would, in any case, be determined during the recommended rigorous review by the tax professionals.

In addition, what is stated on the Form about "861" is derived directly from the 16 statements under the "Ninth Belief" on pages 36 and 37 of the STATEMENT OF FACTS AND BELIEFS REGARDING THE FEDERAL INCOME TAX, which 16 statements were repeatedly served on the United States as questions in Defendant's Petition for Redress of Grievances regarding the federal income tax system. For whatever reason, the United States has decided it does not want to answer those questions – that is, the United States has chosen not to respond.

In addition, what is stated on the Form about "861" is also derived from the six questions thousands of people have sent during the last five years to their elected representatives and to officials at the IRS – questions that have not been answered by the United States.

In October, 2003 alone, Department of Treasury Assistant Secretary for Tax Policy, Ms. Pam Olson, was respectfully Petitioned by over five hundred people to answer the six questions:

> 1) Should I use the rules found in 26 USC § 861(b), and the related regulations beginning at 26 CFR § 1.861-8, to determine my taxable domestic income?

2) If some individuals—including myself—should *not* use those sections for determining their taxable domestic income, please show me where the regulations say who should or should not use those sections for that.

Reason for first two questions: The regulations under 26 USC § 861(b) (26 CFR § 1.861-8 and following) begin by stating that Sections 861(b) and 863(a) state in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after gross income from the U.S. has been determined. (The regulations then say that Sections 862(b) and 863(a) describe how to determine taxable income from *outside* of the U.S.) Section 1.861-1(a)(1) of the regulations confirms that "*taxable income from sources within the United States*" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8. (See also 26 CFR §§ 1.862-1(b), 1.863-1(c).)

3) If a U.S. citizen lives and works exclusively within the 50 states, and receives all of his income from within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show such income to be taxable?

Reason for question: Section 217 of the Revenue Act of 1921, statutory predecessor of 26 USC § 861 and following, stated that income from within the U.S. was taxable for foreigners and for U.S. citizens and

corporations deriving most of their income from federal possessions (but did *not* say the same about the domestic income of most Americans). The regulations under the equivalent section of the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "*specific sources and activities*," which, concerning *domestic* income, still relate only to foreigners and certain Americans receiving income from federal possessions (26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

4) Should one refer to 26 CFR § 1.861-8T(d)(2) to determine whether the "items" of income he receives (such as compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

Reason for question: The regulations (26 CFR § 1.861-8(a)(3)) state that a "*class of gross income*" consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, etc.). The regulations (26 CFR §§ 1.861-8(b)(1)) then direct the reader to "paragraph (d)(2)" of the section, which provides that such "*classes of gross income*" may include some income which is *excluded* for federal income tax purposes.

5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is the income of the average American *not* on that list?

Reason for question: After defining "*exempt income*" to mean income which is exempt, eliminated, or excluded for federal income tax purposes (26 CFR § 1.861-8T(d)(2)(ii)), the regulations give a list of types of income which are *not* exempt (i.e. which *are* subject to tax), which includes the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations, but which does *not* include the domestic income of the average American (26. CFR § 1.861-8T(d)(2)(iii)).

6) What types of income (if any) are *not* exempted from taxation by any *statute*, but are nonetheless "*excluded by law*" (not subject to the federal income tax) because they are, under the Constitution, not taxable by the federal government?

Reason for question: Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute "*or fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types

of income were exempt because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)).

Neither Ms. Olsen, or any one individual from the Executive Branch, the Legislative Branch or the Internal Revenue Service has responded to these simple questions.

Until workers and Entities receive formal, specific answers to the 16 questions or the 6 questions, it is highly appropriate to include those statements as facts to be subjected to a rigorous review by tax professionals, along with every other statement on the Form(s).

The United States, seemingly as an excuse for not answering reasonable questions, seems content to merely declare that "the courts have ruled against these issues." Regarding the "861 evidence" in particular, however, the U.S. Supreme Court has never addressed it, and the various lower court rulings, when they have done anything more than declare the position "frivolous" or "without merit," have relied exclusively upon the broadly-worded general definition of "gross income" found in Section 61 (USC, Title 26), to the exclusion of all else.

This provides a good example of why unsupported assertions and unexplained conclusions do not constitute a valid substitute for Defendants' reasonable answers to reasonable questions. If, as the United States

asserts in its paragraph 14, Defendants need only look to the general statutory definition of "gross income" (as found in Section 61 of the tax code) in order to determine whether their income is indeed taxable, the following obvious questions arise:

1) Why are Defendants to rely only on a section which says nothing at all about who is receiving income or where it is coming from, while ignoring the part of the law which specifically deals with such issues (Subchapter N, which begins with Section 861)?

2) If Defendants need look no further than Section 61, why is there a cross-reference under 61 **itself** directing the reader to 861 regarding domestic income (and 862 regarding foreign-source income)? (Defs emphasis).

3) If the United States is correct in its repeated assertion that the general wording of Section 61 makes it unnecessary to look elsewhere in the Code to determine whether one's income is taxable, why do the regulations under Section 61 **itself** state that if "another section of the Code or of the regulations thereunder" gives specific rules about any specific type of income, "such other provision shall apply **notwithstanding section 61 and the regulations thereunder**" (26 CFR § 1.61-1(b))? (Defs emphasis).

4) If Defendants need look no further than Section 61, why do the regulations say that the types of income listed in Section 61 make up

"classes of gross income," which may include some income which is tax-exempt (26 CFR §§ 1.861-8(a)(3), 1.861-8(b)(1))?

5) If Defendants need look no further than the general definition of "gross income," why do the regulations, past and present, specifically say that, notwithstanding that broadly-worded definition, some income is exempt from tax because of the Constitution itself (e.g., 26 CFR § 1.312-6(b), 26 CFR § 39.22(b)-1 (1956))?

6) If the broad language in Section 61 means that all income is taxable, no matter where it comes from, why did a Supreme Court justice state that, "'From whatever source derived,' as it is written in the Sixteenth Amendment [which is where the wording in Section 61 came from], does not mean from whatever source derived" (*Wright v. United States*, 302 U.S. 583 (1938), dissenting opinion)?

7) If Defendants should only refer to the general definitions of "gross income" and "taxable income," why do half a dozen regulations say, without any qualifications or conditions, that 861 and its regulations are to be used to determine one's taxable domestic income (e.g., 26 CFR §§ 1.861-1(a), 1.861-1(b), 1.861-8(a), 1.863- 1(c))?

8) If Section 61 makes all income taxable, no matter where it comes from, why do the regulations under 861, and more than eighty years of predecessor statutes and regulations, plainly identify U.S.-source income as being taxable for foreigners, and for certain Americans

with possessions income, while never mentioning Americans who live and work only in the U.S.?

To Defendants' knowledge, NONE of the court rulings concerning 861 have ever addressed ANY of the issues above, or even MENTIONED any of the sections cited therein. Not once. Choosing to ignore such questions entirely, and the research report that generated the questions (Schulz Decl. 10, Exh. A), while calling a conclusion "frivolous" or "without merit," is not an adequate substitute for providing reasonable answers to reasonable questions.

To malign or penalize a person for his conclusions, while refusing to point out exactly where his error lies, and refusing (repeatedly) to answer his questions about how to properly comply with the law, is an affront to the principle of Due Process.

The ability of the United States to insult people, fine people, or even imprison people, is no substitute for the ability to actually help people "understand" their tax responsibilities, as the IRS' own Mission Statement dictates. In a country based upon the rule of law, "enforcement actions" are an unacceptable response to the asking of questions by honest citizens who peaceably Petition the Government for Redress of alleged Grievances, particularly those dealing with constitutional torts.

Furthermore, as the United States well knows, in a federal trial a jury is not permitted to decide the validity of anyone's legal position, but

must accept the judge's statements on what the law is. Therefore, citing jury verdicts as if they constitute a substantive refutation of a well-articulated legal argument is disingenuous, to say the least.

15. Deny.

Defendants have no customers.

WTP Form #8 is not "altered." The Form recommends to the worker what information to **legally** enter on the standard government I-9 form, and includes notes and instructions that have obviously by added by Defendants. Schulz Decl. #8, Exh. A, par 2m and Exhibit M.

The Form is not "declaring that the customers Social Security number cannot be disclosed." The Form is obviously recommending the worker enter, "optional, not required by law" where the form requests the worker's social security number, in keeping with the worker's Rights under U.S. law and the statements made regarding social security on WTP Form #1.

Defendants are certainly not instructing employers to falsify WTP Form #2. Obviously, the employer is not going to sign the form unless he complies with the law, namely 26 CFR 301.6109-1(c), which requires the company to make an affidavit *for its file* stating the Entity made two requests for the worker's Tax Identification Number/ Social Security Number.

16. Deny.

Defendants have no customers.

Defendants forms are respectful and logically progress from mild requests to stronger requests to secure the Rights of the requestor, all the while requesting the information be subjected to rigorous reviews by tax professionals (CPA, attorneys, accountants, etc.), and all the while "preserving" rights to pursue other remedies as are provided by law. Schulz Dec 6, Exh A. The worker should never have to use Form #12, but if he did, the worker finds it necessary to tell the Entity (**at risk of losing his job**) that the unless the Entity stops withholding, the Entity is "at risk of lawsuit for breach, conversion of property, violation of human rights, violation of due process, violation of labor rights, irreparable injury and perhaps other torts and injuries."

17. <u>Deny</u>.

The program is not "false" or illegal.

The fact that a jury convicted Dick Simkanin does not establish any precedent regarding the issues in the instant case. Simkanin was an employer who was convicted for violating 26 USC 7202 -- a penalty statute[1]. Schulz Decl #7, Exhibit A, Transcript.

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[1] 26 USC 7202 reads, "Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or

Simkanin, an employer who stopped withholding did not argue at his trial that the 16th Amendment was not properly ratified. Simkanin was prevented (by a motion In limine) from entering into evidence and showing the jury anything he had read and relied upon as his sole basis for his beliefs and decision to stop withholding. What he relied upon were the federal statutes, regulations and Supreme Court decisions referred to above in paragraphs 5 and 10, and which constitute significant portions of the WTP Forms themselves. It was never Simkanin's intent to instruct the Court or the Jury what the law was, but to instead to justify his actions by testifying about his beliefs about the laws, court decisions, etc. that he had relied upon. However, he was prevented from doing so. To the extent that was his defense, which it was, Simkanin was prevented from putting on a defense by the court.

As laid out in paragraph 5 above, what Defendants have said about the ratification of the 16th Amendment (in the Blue Folder, but not on the Forms to be used by the workers and Entities), is based entirely on the questions/facts regarding the ratification of the 16th Amend. are included in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Sixth Belief", paragraphs 1-119. Nowhere in American history or jurisprudence have said questions been answered except by

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imprisoned not more than 5 years, or both, together with the costs of prosecution."

Bill Benson in his two volume research report, "The Law That Never Was" and at the two-day Citizens' Truth in Taxation Hearing in Washington DC on February 27-28, 2002 by a panel of experts including constitutional attorney Lowell Becraft, former IRS Special Agent Joseph Banister and Bill Benson. Nowhere in American jurisprudence have said facts been refuted. They certainly were not presented or raised in Simkanin's courtroom according to the transcript of the trial. Schulz Decl. 7, Exhibit A.

18. Deny.

If the "scheme" the United States is referring to is Defendants' Operation Stop Withholding and the speech in the Blue Folder, the "scheme" is not illegal.

If the "scheme" the United States is referring to is Defendants' epic struggle with the United States over the question of the People's Right to withdraw their financial support from the United States if the United States refuses to respond to the People's Petitions for Redress of constitutional torts, then the United States is mixing "apples with oranges."

Operation Stop Withholding and the Blue Folder relate only to question of the withholding of pay by companies. The statements in the Blue Folder stand on their own legal legs, regardless of the outcome of the underlying question in Defendants' epic struggle with the United States regarding the Rights of the People and the

obligations of the Government under the First Amendment's Petition Clause.

The United States is obviously out of bounds by characterizing the decision in *We The People Foundation v. United States* in 2005, by the United States District Court for the District of Columbia, a "warning." In effect, the Department of Justice is attempting to intimidate Defendants by threatening Defendants to discontinue Defendants' efforts to obtain, for the first time in American history and Jurisprudence a judicial declaration of the People's Rights to hold the United States accountable to the constitution by claiming and exercising their Rights guaranteed by the Petition Clause of the First Amendment. Until Defendants exhaust their judicial remedies Defendants have every Right to rely on the historical record and purpose of that clause, as clearly expressed by the Magna Carta, the English Bill of Rights, the First Congress of the United States, the Declaration of Independence and the responses by the United States Congress and the State Legislatures to Petitions for Redress for decades following the adoption of the United States Constitution and the Bill of Rights.

The United States, as a party to *We The People*, is well aware of the extraordinarily interesting decision in that case by the United States Court of Appeals for the DC Circuit and the powerful arguments by Defendants' in their Petition for Rehearing En Banc (Schulz Decl #9, Exh. A)

Defendants most strenuously deny any assertion by the United States that the decision by the DC District Court was meant by the United States Judicial branch to be a "warning." The assertion is frivolous in the extreme.

If in fact, by its assertion, the Executive branch of the United States is waving the decision by the DC District Court in the face of Defendants as a warning to Defendants to discontinue their peaceful attempts to hold the United States accountable to the Constitution by constitutional means, then the Executive branch is unquestionably abusing its power. Additionally, to the extent that the instant lawsuit is directly interfering with the Defendant's ability to prosecute the ongoing litigation in the DC Court of Appeals, and the plain fact that the controversy in that suit involves the exact same offensive activities the government complains of here and involves the exact same legal questions, this lawsuit should reasonably be viewed as an obstruction of justice -- i.e., a criminal act of prosecutorial abuse.

19. Deny.

Defendants have no customers.

Defendants' purposes are the "rigorous review" by "tax professionals (CPA, attorneys, accountants, etc.)" and Entities' "legal counsel" of the information in the Forms and the legal termination of voluntary wage withholding by companies as provided for by U.S. law, (*again, see* 26 CFR 31.3402(p)-1), and the claim and

exercise of the First Amendment Right to Petition -- i.e., not the underpayment of individual taxes, or the cessation of individual tax returns or the obstruction of lawful IRS collection and examinations. (Schulz decl. 6, Exh. A: par. 2, Exh C; Exh P, Form 11, page 1; Exh N, form 9, page 8-9; Exh O, form 10, page 7-8; and Exh Q, form 12, page 2).

20. Deny.

Defendants have no customers.

This comment is irrelevant to this case which is about the legal termination of workers' voluntary withholding agreements as provided for by U.S. law, not about the filing or non-filing of individual income tax returns. Substitutes for returns are prepared by the United States for individuals the United States believes have failed to file a required tax return. Substitutes for return have nothing to do with the wage or salary withholding which is the whole of the Government's claims regarding Defendant's alleged violations of IRC Section 6700.

Beyond this, IRS Revenue Agent training materials covering Delegation of Authority Order No. 182 (Rev 3, 12-14-83) and 26 USC 6020(b) (Substitute for Returns) make clear that IRS has no legal authority to create "substitute returns" for *income tax* non-filers that the government complains of (i.e., for Individual Form 1040). IRS's delegated authority regarding Substitute for Returns is strictly limited to creating substitutes for *business* returns.

21. Deny.

Defendants have no customers.

The time and expense the IRS devoted to assessing and collecting taxes due the United States from individuals or corporations is an irrelevant fact having nothing to do with the subject of this case, that is, whether Defendants' Operation Stop Withholding and the Forms within the Blue Folder constitute an illegal tax shelter within the meaning of Section 6700 and 6701 of the Internal Revenue Code.

ADDITIONAL MATERIAL FACTS THAT DEFENDANT'S CONTEND ARE IN DISPUTE.

22. Contrary to the United States assertions (U.S. Brief at 3), Defendants do not fit into the category of "advisors who seek to profit by ... aid[ing] others in the fraudulent underpayment of their tax." Schulz does not and cannot profit from the distribution of the Blue Folder; nor is the purpose of the Blue Folder to offer advice on how a person can reduce the amount of his taxes owed by law. Schulz Dec.#5, Exhibit A-M.

23. The United States asserts without support that, "There is no question that defendants organized or sold a plan or arrangement [in violation of 6700 and 6701]. Defendants charge for participation in parts of the programs and other parts are offered for free. Defendants market their programs in seminars and on their

websites. Thus, defendants' tax termination package is organized and sold within the meaning of IRC Section 6700." (U.S. Brief at 4).

In fact, as previously argued (Defs 5/23/07 Memo. page 3), the Forms provided by Defendants for use by workers and companies to legally stop withholding do not provide any information to workers or company officials about "tax avoidance" or "tax termination." See Schulz Declaration #6, Exh. A, par 2 c-q, Exhibits C-Q.

24. *The United States incorrectly asserts* (Brief, page 4) that the collection of Forms provided by Defendants for use by workers and companies to legally stop withholding is a "tax termination package." Ironically, the United States admits in the last paragraph of its Brief (at 19) that the words "tax termination package" "do not appear consecutively" in Defendants materials. The United States, disingenuously then says, in effect, "but two of the three words show up (juxtaposed) in different parts of the label on the Blue Folder." In fact, the label reads. "Legal Termination of Tax Withholding For Companies, Workers and Independent Contractors." The instructions on how to legally terminate **Withholding** do not offer any advice on how to terminate taxes. Just because a company terminates withholding from a worker's pay does not mean the worker would or could terminate the payment of taxes. Very importantly, monies withheld under voluntary withholding agreements are technically "pre-payments" against potential tax liabilities that may arise

when taxes are assessed and due under the law, i.e., on April 15. Until payment is required and due by law, the wages and salaries of American workers remain their exclusive property, and they retain the Right in law to possess it in full, without withholding. This is the very essence of voluntary withholding agreements (See 26 CFR 31.3402(p)-1).

Use of the words, "tax termination package" by the United States *is* false, prejudicial, inflammatory, irrelevant and scandalous.

The Forms provided by Defendants for use by workers and companies to legally stop withholding contain an overwhelming number of references to statutes, regulations and case law proving the voluntary nature of withholding and the ease by which the law provides for legally terminating withholding for those wishing to do so. **Critically, in its pleadings in this case, the United States has not denied or rebutted a single one of the withholding related citations.** The Forms provided by Defendants for use by workers and companies to legally stop withholding offer no advice regarding "tax benefits" nor do they seek to encourage non-filing of returns, nor do they offer or give any personal assistance as to those matters.

25. The United States incorrectly asserts (Brief, page 4) that "defendants organized or sold a plan or arrangement [within the meaning of IRC 6700 or 6701]." In fact, Defendants have not organized such a plan or arrangement and

certainly have not sold such a plan or arrangement. See Schulz Declaration #1, and Schulz Declaration #5, Exhibits A-M.

26. The United States incorrectly asserts (Brief, page 4) that "Defendants charge for participation in parts of the programs and other parts are offered for free." In fact, Defendants have never charged a fee for the Blue Folder, which is the only part of Defendants' Operation Stop Withholding. See Schulz Declaration #1 and Schulz Declaration #5, Exhibits A-M.

27. The United States incorrectly asserts (Brief, page 4) that, "Defendants market their programs in seminars and on their websites." In fact, Defendants do not market the Blue Folder. They give it away (virtually for free) in public meetings and on their websites. See Schulz Declaration #1, and Schulz Declaration #5, Exhibits A-M.

28. Almost everything the United States has written under "(2) Defendants made false or fraudulent statements regarding the tax benefits associated with their program" (Brief, at 4-8), is frivolous. There is absolutely no basis in fact or in law to virtually all the United States has written, but the United States has filed it anyway, with malice, to harass Defendants and deceive the Court through obfuscation. Virtually all assertions made by the United States on these pages are fraudulent, deceptive, misleading, deceitful and shocking to the senses coming from the United States Department of Justice.

The fraud, with actual intent to confuse and deceive the Court, was obviously meant to directly prevent the exposure of the truth regarding the Right of workers to legally terminate withholding, and to indirectly deprive Schulz of his lawful Rights to Speak, Publish, Assemble and Petition the Government for Redress of Grievances relating to the fraudulent enforcement of the nation's withholding laws as well as other constitutional torts.

These extensive assertions by the United States are so false, so untrue, so erroneous, so fallacious that the United States has now revealed that not only has it been abusing its powers under Section 6700 and 6701 to obstruct justice, but the IRS and the DOJ will do anything to prevail in this case, including lying to the Court about every aspect of the law, the facts and the motivation of the Government.

What should now be clear to the Court is that the United States' legitimate powers under Section 6700 and 6701 of the Internal Revenue Code are not being summoned against Defendants to further any legitimate end of government, but for the malevolent ends of perpetuating, preserving and protecting the deceptive and illegal practices of IRS to force companies to withhold monies from the pay of working Americans who wish only to exercise their Rights **as expressly provided by the internal revenue laws of this nation.**

The United States (the IRS agents and DOJ attorneys prosecuting this case) should be held in

contempt of Court and sanctioned for actual fraud and obstruction of justice.

29. The United States incorrectly asserts that, "The main theme of defendants' program is that ordinary citizens are not 'taxpayers' and thus not subject to the nation's tax laws." (Brief at 4). Unsupported and not true. In fact, the actual "theme" of the Forms provided by Defendants for use by workers and companies to legally stop withholding is **clearly** 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the company can terminate a withholding agreement by simply notifying the other party), 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and Entity is required for withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required), 8 USC 1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number), and similar statutes, regulations and case law. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

Defendants' theme is so clear and unambiguous it leaves no room for misinterpretation. Despite the fact that the U.S. laws controlling wage withholding are the essence of the Government's judicial complaint against Defendants, the United States has not, and cannot rebut Defendants' citations or refute his reliance upon these references in withholding law. Instead, the United States engages in hyperbole, obfuscation and outright perjury in an attempt to deceive the Court into believing the Forms provided by Defendants for use by workers and companies to legally stop withholding stands for the proposition that citizens are not subject to the nation's tax law. This is so contemptuous and deceitful, coming from the Department of Justice, as to be shocking to the senses.

30. The United States incorrectly asserts that Defendants have defined "taxpayers" as only those who have volunteered to pay taxes through written agreements with their employers. (Brief at 4). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants define "taxpayer," much less as "volunteers."

31. The United States incorrectly asserts that Defendants have claimed the Internal Revenue Code is unconstitutional. (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review"

by "tax professionals (CPAs, attorneys, accountants, etc.)" have Defendants ever said the IRC was unconstitutional. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q. The laws are patently constitutional, it is their *application* that is not.

32. The United States incorrectly asserts that Defendants contend that those participating in Operation Stop Withholding can withhold taxes and stop filing returns until Defendants' questions regarding the legality of the income tax have been answered (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make or imply such behavior. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

33. The United States incorrectly asserts that Defendants' Forms say "federal taxes only apply to persons earning foreign source income". (Brief at 5). Unsupported and not true. Nowhere in the Forms to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a statement. In a statement true but irrelevant to the theme of the program the Forms say, "I do not derive taxable income as defined in 26 CFR Section 1.863-1c from a taxable source defined in the operative section of 26 CFR Section 1.861-(f)(i)." Schulz Decl #6, Exh A, Exhibits C-Q.

34. The United States incorrectly asserts that Defendants have claimed the IRC "does not apply to an individual that has unilaterally

revoked their [sic] consent to pay taxes." (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding do Defendants make such a claim. The Forms cite the law that authorizes the unilateral revocation of a worker's consent to voluntary **withholding**, not the payment of taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

35. The United States incorrectly asserts that Defendants contend that those participating in the program can "withhold taxes and stop filing tax returns until defendants' questions regarding the legality of the income tax have been answered." (Brief at 5) Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a statement(s). Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

36. c The United States incorrectly, asserts that Defendants' program advises people they can opt-out of paying taxes if they simply stop volunteering to pay taxes." (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a claim. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

37. The United States incorrectly asserts that there is no difference between wage withholding and tax withholding. (Brief at 5). Unsupported

and not true. They are different. A company could legally terminate wage withholding by giving the worker 100% of his pay, but the worker would still be legally obligated to pay 100% of the taxes assessed and due under law.

38. The United States incorrectly asserts that Defendants' have claimed that "an individual can revoke his or her requirement to pay taxes or file returns." (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a claim. The Forms address the legal authority of an individual to terminate his/her private, voluntary contract consenting to wage withholding, not the filing or paying of his taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

39. The United States incorrectly asserts once more that Defendants maintain that "the income tax is unconstitutional, or only applies to foreign source income." (Brief at 6). Unsupported and not true. Nowhere in the Forms to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" or in the Blue Folder do Defendants say the income tax is unconstitutional. Schulz Dec #6, Exh A, par 2c-q, Exhts C-Q.

40. The United States incorrectly asserts that Defendants have stated that filing a tax return or payment of federal income taxes is voluntary. (Brief at 7). Unsupported and not true. Nowhere

in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make any statements about individuals filing tax returns or making tax payments. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

41. The United States incorrectly asserts that Defendants' program is a "re-hash of oft-repeated anti-tax arguments about what constitutes income." (Brief at 8). Unsupported and not true. The Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" focus on the voluntary nature under the law of the practice of withholding of a worker's pay by an entity. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

42. The United States incorrectly asserts that Defendants' "knew that] their statements regarding the tax consequences of purchasing their scheme were false or fraudulent." (Brief at 8). Not true and not relevant. The Blue Folders are not purchased. Regardless, there are no tax consequences of having a Blue Folder, or of using the Forms in the Blue Folder. Terminating withholding is expressly provided by U.S. law. The United States has not denied or refuted Defendants' legal citations asserting such. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

43. The United States asserts that "the law is well settled that the tax statements made by

defendants of promises to 'leave the tax system' through the use of fraudulent 'We the People' forms are false [sic]." (Brief at 9). Defendants have no idea what this sentence means. Regardless, Defendants Forms make no tax statements or promises.

44. The United States incorrectly asserts that "Schulz admits that he created We The People to document this research into the tax code." (Brief at 9). Schulz finds this to be one of the most egregious lies in the United States' brief. Schulz has never made such an admission, nor could he. It's unsupported and not true. There must be no shame remaining at the DOJ for it to make such a ridiculous assertion. The details of the formation of the We The People Foundation for Constitutional Education, Inc. and We The People Congress, Inc., and their predecessor organizations are well known to the Government, who played a hand in their start-up as 501(c)3 and 501(c)4 organizations, respectively, who has received Schulz Declaration #1 in this case with its discussion of the background of Schulz and the WTP organization, and who is familiar with Defendants' website with its "About Us" feature detailing the origins of the organizations.

45. The United States incorrectly asserts that Defendants' Forms have made "promises of tax exemption" that had a "substantial impact on people's decisions whether to purchase the tax termination program." (Brief at 10). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs,

attorneys, accountants, etc.)" do Defendants make any promises or talk about tax exemptions. In addition, people don't purchase the Forms; they are distributed free of charge. The United States knows this. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q and Schulz Decl. #5, Exhibits A-M.

46. The United States incorrectly asserts that "defendants' customers have used the "tax termination" program for its intended purpose: (1) to forestall assessment and collection of taxes and (2) to 'voluntarily' withdraw from the federal tax system." (Brief at 10). Unsupported and not true. Defendants have no customers, the subject Forms relate solely to the withholding of pay -- not tax terminations, assessments, deductions, or determinations. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants say the Forms can or should be used to forestall the assessment and collection of taxes or to withdraw from the federal tax system. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

47. The United States incorrectly asserts that Defendants "are advising and assisting persons to put into practice discredited theories of federal tax laws." (Brief at 10). Unsupported and not true. The Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" rely on laws that are black letter. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

In fact, it is the United States that has been discredited by continuing to prosecute this case without rebutting the actual "theme" of the Forms provided by Defendants for use by workers and companies to legally stop withholding, including, but not limited to 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the company can terminate a withholding agreement by simply notifying the other party), 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and Entity is required for withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required), 8 USC1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number), and similar statutes, regulations and case law.

48. The United States incorrectly asserts that Defendants' "customers have been harmed by the abusive promotions because the customers have paid defendants significant sums to purchase worthless We the People forms." (Brief at 10). Unsupported and not true. Defendants

have no customers, Defendants distribute the Forms for **free** (Schulz Declaration #5, Exhibits A-M) and the Forms are about the laws controlling the withholding of pay, not about the termination or diminution of potential *bona fide* tax liabilities. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

49. The United States incorrectly asserts that Defendants Forms "have been discredited." (Brief at 10). Unsupported and not true. In fact, the United States has not denied any of the withholding statutes, regulations or case law cited and relied upon by Defendants on the various forms Defendants recommend be used by workers and company officials to legally terminate withholding.

50. The United States incorrectly asserts that Defendants have "misled customers by advertising that employers and other individuals have legally stopped paying taxes...and continue to falsely advertise the legality of the scheme, while they know others have faced criminal sanctions for following the same plan." (Brief at 10-11). Unsupported and not true. Defendants have no customers; the Forms and Folder address withholding of pay not taxes; and no employer has faced criminal sanctions for legally terminating withholding or violating the withholding laws cited by Defendants in their Forms and Folder.

51. The United States incorrectly asserts Defendants' "customers are not paying the correct amount of taxes to the United States Treasury." (Brief at 11). Unsupported, not true and

misleading. Defendants have no customers and the Defendants' Operation Stop Withholding is about withholding of pay, not about the payment of taxes due and owing to the United States. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

52. The United States incorrectly asserts Defendants are "attempting to wrench tax statutes out of context to encourage a willful misreading of the law...Schulz promotes himself as knowledgeable about the income tax laws and the tax termination program..." (Brief at 11). Unsupported and not true. The complaint targets Defendants Operation Stop Withholding and its Forms. It is not a tax termination program. In addition, those Forms have numerous legal citations. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q. The United States has not denied the accuracy of any of those legal references.

53. The United States incorrectly asserts in footnote 37 on page 11 of its Brief, referring to Schulz Declaration #1, Exhibits H-I, that Defendants' customers have followed the scheme, and that Defendants argue that no one would use the illegal plan after receiving competent advice, while touting that others have benefited from the plan. Not true. Beyond the fact that Defendants have no customers and the plan is not illegal, said Exhibits say, in effect, that scuttlebutt has it that workers are presenting the Forms to Entities to legally stop withholding, but Entities are refusing to stop withholding and this appears to be sparking "workers' rights" litigation.

54. The United States incorrectly asserts that Defendants "advise customers to prepare, file, or assist them in preparing and filing, false or fraudulent tax withholding forms, and other documents purporting to enable customers to legally stop filing returns and paying taxes." (Brief at 12). Unsupported and not true. Beyond the fact that Defendants have no customers, Defendants' Blue Folders do not advise anyone to file *false* withholding forms or to stop filing returns and paying taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

55. The United States incorrectly asserts that Defendants' false tax advice to customers and their abusive program interferes with the enforcement of the internal revenue laws by delaying examination and collection and by helping their customers violate the internal revenue laws." (Brief at 13). Unsupported and not true. Beyond the fact that Defendants have no customers and no abusive program that helps people violate the law, Defendants' Forms and Blue Folder cannot delay IRS examinations and collections because the Forms and Blue Folder are totally unrelated to any process of examinations and collections. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

56. The United States incorrectly asserts that "customers that follow defendants' advice file improper, inaccurate tax returns or do not file tax returns at all, and in either case do not report or pay their proper federal income taxes." (Brief at 13). Unsupported and not true. Beyond the fact that Defendants have no customers, the

program the United States is complaining about has everything to do with the legal withholding of workers' pay and absolutely nothing to do with tax returns and the reporting and paying of federal income taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

57. The United States incorrectly asserts that an injunction will not harm Defendants but will prevent Defendants from continuing to disrupt the federal tax system. (Brief at 13). Not true. An injunction will be an infringement and an abridgment of Defendants' First Amendment Rights of Speech, Press, Assembly and Petition, and will seriously discredit Defendants in their attempt to educate workers and companies regarding their Rights to legally stop withholding of pay.

58. The United States incorrectly asserts that "Defendants' promotion constitutes commercial speech." (Brief at 15). Unsupported and not true. The United States has not rebutted the facts and arguments contained in Defendants' Motion to Dismiss. For additional evidence in support of the fact that Defendants Blue Folder and its Forms are not commercial speech, the Court's attention is invited to Schulz Declaration #5, Exhibits A-M providing additional evidence that the Blue Folders are not sold and furthermore they contain no offer or solicitation for any commercial product or service.

59. The United States, in referring to a series of prior tax shelter cases, incorrectly asserts that "Like defendants in the above cases, defendants

market a line of tax evasion products and services." (Brief at 15). Unsupported and not true. Defendants do not have much less market any tax evasion products or services. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

60. The United States incorrectly asserts that the court, in *We The People v. United States* has unequivocally established "that defendants' illegal conduct is afforded no First Amendment protection." (Brief at 16). Unsupported and not true. First of all that case is far from over. (Schulz Decl #9, Exh A). Regardless, the issues presented of the United States' complaint in the instant case (defendants' Operation Stop Withholding, and the Forms in the Blue Folder) were not presented or raised in *We The People*.

61. The United States, in referring to *Buttorff*, has incorrectly asserted that Defendants are "creating and marketing a commercial product designed to effectuate the same scheme of falsifying forms W-4." (Brief at 16). Unsupported and not true. Defendants' program is not similar to any program addressed by any prior court – the legal termination of withholding of workers' pay by Entities, based on black letter law that the United States has not and cannot tell this Court means something other than what Defendants, in their Operation Stop Withholding Forms have stated it means. Defendants do not provide any instruction with regard to W-4 forms except that the W-4s are not required by U.S. law for ordinary American workers. In any event, Defendants presume the users of the WTP forms will not file <u>any</u> W-4 form, much less do they instruct the users

on how to "falsify" a Form W-4. Plaintiffs have failed to refute Defendant's claim that W-4's are voluntary under U.S. law. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

62. The United States has incorrectly asserted that Defendants are "offering how-to-do-it assistance and advice that is meant for their audience to use to circumvent the law." (Brief at 17). Unsupported and not true. Defendants' Operation Stop Withholding Forms merely for workers to submit to Entities, Entities to submit to tax professionals (CPAs, attorneys, accountants, etc.) for the legal termination of withholding by those Entities of the pay of workers. Defendants Forms are certainly not meant for anyone to circumvent the law. The law the Forms rely on is black letter law that the United States has not and cannot tell this court does not allow for the legal termination of withholding. Critically, Defendants do not offer, or provide, legal advice or assistance. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

63. The United States incorrectly asserts that Defendants' Operation Stop Withholding Forms are fraudulent because they rely on the Section 861 Argument , the claim that the 16th Amendment was not ratified, and other "frivolous" arguments have unanimously rejected. (Brief at 18). Unsupported and not true. First, the Forms rely directly on black letter law relating directly to withholding that the United States has not attacked. See for instance, Defendants' accompanying Brief Point IV, and paragraph 12 above. Second, the subject Forms

do not mention, much less rely on the 16th Amendment argument. Finally, beyond the fact that Section 861 is irrelevant to the main theme and central thrust of the Forms, what is said is not frivolous. See paragraph 14 above, Schulz Decl. #10, Exh. A, and Schulz Decl. #2, Exh. III, Attach #2, and Exh. KKK.

64. The United States has incorrectly asserted that Defendants Rule 12(b)(6) motion did not "attack the Plaintiff's factual allegations " and simply argued "they have a First Amendment Right to commit fraud." (Brief at 18). Not supported and not true. See Schulz's Declarations 1-3 and Defendants Brief. Defendants have never argued they have a First Amendment Right to commit fraud. Defendants do however assert they do enjoy fundamental, unalienable First Amendment Rights including the Right to Petition the Government for Redress of Grievances -- even if that involves educating Americans about the law and their constitutionally protected Rights, and even if such education eventually prompts activity which is inconvenient for, or even highly offensive to the U.S. Government due to its misperceptions regarding its constitutionally limited self-interests.

Dated: July 16, 2007

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APPENDIX Q

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DEFENDANTS' STATEMENT OF MATERIAL FACTS THAT DEFENDANTS CONTEND ARE NOT IN GENUINE DISPUTE

1. "The law [26 CFR § 31.3402 (p)-1 Voluntary Withholding Agreements]....(a) An employee who desires to enter into an agreement for withholding.....shall furnish his employer with Form W -4 (or equivalent)for withholding and (b)(2) Either the employer or the employee may terminate the agreement by furnishing a signed written notice to the other...." Voluntary Withholding Agreements are voluntary.

WTP Form #1, 7.A

2. Pursuant to ***26 USC § 3402(p)(3)(A), § 5517*** and ***31 CFR §215.2(n)(1)***, all ordinary American workers have the right to refuse to consent to enter into a voluntary withholding agreement and can voluntarily refuse to have amounts taken from his/her pay for federal and/or state taxes, social security, other governmental insurance programs or welfare programs.

WTP Form #1, 7.B

3. Pursuant to ***26 CFR § 31.3402(p)-1(b)(2)***, either a company or a worker may terminate the withholding agreement (or its equivalent) at any time, by furnishing a signed, written notice to the other.

WTP From #1, 7.C

4. **"Protected Individuals"** as defined at ***8 USC §1324b(a)(3)(A)*** cannot be compelled to submit any specific government documents or to disclose a social security number as a condition of being hired by or maintaining their status as a worker. Most American workers qualify as "Protected Individuals" under the law.

WTP Form #1, 7.G

5. The landmark decision of ***EEOC v. Information Systems Consulting CA3-92-0169T U.S.D.C. Northern District of Texas Dallas Division,*** held that companies cannot discriminate against applicants or workers for failure to obtain or disclose a social security number.

WTP Form #1, 7.I

6. No law requires a worker to file a Form W-4 (or its equivalent). In ***U.S. v. Mobil Oil Co., 82-1 USTC*** para. 9242, ***U.S.D.C. ND Tex. Dallas 1981 CA. 3-80-04 38-G***, the court ruled that an Entity does not even have to send a W-4 Form or other employment forms to the Internal Revenue Service unless served with a judicial court-ordered summons to do so.

WTP Form #1, 7.J

7. Pursuant to ***IRC §6041(c)***, a worker is only required to furnish a name and address upon demand of a company for whom he seeks to work. No social security number is required by statute.

WTP Form #1, 7.K

8. Absent a valid, order executed from a court of competent jurisdiction, a company has no lawful authority to take amounts from a worker's paycheck for non-judicial garnishments, levies, interest and/or penalties without his or her written consent.

WTP Form #1, 7.M

9. Under ***IRC §6301***, any company, acting as a "tax collector," must be able to produce evidence of having a written delegation of authority from the Secretary to collect from a worker taxes imposed by the internal revenue laws. No implementing regulation exists for such under 26 CFR.

WTP Form #1, 7.O

10. Under ***IRC §6201***, any company, acting as an "assessment officer," must be able to provide evidence of having a written delegation of authority from the Secretary to make inquiries, determinations and assessments against a worker for the taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed under 26 USC. No implementing regulation exists for such under 26 CFR.

WTP Form #1, 7.P

11. The authority of a **Withholding Agent** (defined in ***§§7701(a)16, 26CFR §301.7701-16***) to

withhold from a worker's pay or remuneration (***IRC §§1441, 1442, 1443***, and specifically in ***26 CFR §1.14 41-7***) applies only to nonresident aliens and foreign entities. Said authority does not extend to ordinary American workers.

WTP Form #1, 7.Q

12. A **Withholding Agent** is required to have the specific *Form 2678* on file with the IRS to be legally authorized to withhold from a worker's earnings, or a *Form 8655 Reporting Agent Authorizing Certificate* from the Treasury Financial Management Service.

WTP Form #1, 7.R

13. A company must execute a Form 2678 or 8655 specific to each worker. These forms are the only authority by which a **Withholding Agent** as defined in law can legally withhold money. These forms do not apply to ordinary American workers and therefore the companies do not have filing or reporting requirements regarding such.

WTP Form #1, 7.S

14. The published policies of the IRS in *Publication 515 pages 2, 3 and 4* are clear in explaining that ordinary American workers are not subject to withholding of the income tax imposed in Subtitle A, and not subject to the jurisdiction for federal or state withholding.

WTP Form #1, 7.T

15. State-federal agreements for administration of qualified state income taxes are authorized by ***Part 215 of 31 CFR***. The authority applies exclusively to federal government agencies and personnel; it does not extend to general population in States of the Union. Pursuant to ***31 CF R § 215 .9*** and ***26 USC Subtitle A***, an ordinary American worker needs to provide his written consent to have any such sums withheld.

WTP Form #1, 7.V

16. To legally withhold Social Security or other similar federal/state insurance taxes, a worker must knowingly and voluntarily agree to such via a ***Section 218 Voluntary Agreement*** for coverage of social security/insurance benefits pursuant to *42 USC 418.*

WTP Form #1, 7.X

17. Ordinary American workers do not derive Subtitle A wage Gross Income (***IRC §§ 61, 911, and 26 CFR §§1 .861-4, 1.61-2***) from their labor and their remuneration does not constitute wages for withholding purposes under ***IRC §3401 (a)(8)(A)(i)***.

WTP Form #1, 7.Y

18. Ordinary American workers do not derive taxable income as defined in ***26 CFR §1.863-1(c)*** from a taxable source defined in the **operative** section of ***26 CFR §1.86 1-(f)(i)***. They are not

engaged in a revenue taxable activity, event, or commodity. They are outside the venue and the jurisdiction of ***26 USC*** and ***26 CFR.***

WTP Form #1, 7.Z

19. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." ***Miranda v. Arizona, 384 U.S. 436, 491***. Federal and/or state withholding, for any purpose, from the paychecks of ordinary Americans cannot be legally accomplished without the voluntary consent of the worker.

WTP Form #1, 7.AA

20. Companies using hired workers must comply with the ***Anti-Discrimination Act (8 U.S.C. §1324a*** and ***§1324b***, the ***Civil Rights Act of 1974,*** and the ***Privacy Act of 5 U.S.C.A. 552(a)***, all which prohibit discrimination against **"Protected Individuals"** based on citizenship or national origin, or to deny any individual any right, benefit or privilege provided by the law because of failure to disclose a social security number.

WTP Form #2, 7.B

21. Ordinary American workers are ***"Protected Individuals"*** as defined at ***8 USC §1324b(a)(3)(A)***, and cannot be compelled to submit any specific government documents or to

disclose a social security number as a condition being hired by or maintaining a position with a company.

WTP Form #2, 7.C

22. Companies are required by law to be in accordance with the ruling of ***EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. INFORMATION SYSTEMSCONSULTING, United States District Court for the Norther District of Texas Dallas Division CA3-92-0169-T,*** which held that, *"The defendant shall be permanently enjoined from terminating an employee or refusing to hire an individual for failure to provide a social security number."*

WTP Form #2, 7.D

23. A worker's signed **Statement of Citizenship and Residence** satisfies the requirement of the Department of Justice that a worker attest to his employment eligibility under ***8 USC 324a(b)(2).***

WTP Form #2, 7.E

24. Pursuant to ***IRC §6041(c)***, a worker is only required to furnish a name and address upon demand of a company hiring him. No social security number is required by statute.

WTP Form #2, 7.F

25. Pursuant to ***42 USC 405(c)(2)(B)(i),*** unless an individual is a seeking to become a direct recipient of government benefits, he not required

by law to obtain or disclose a social security number as a condition of being hired or maintain an existing position.

WTP Form #2, 7.G

26. Under ***Internal Revenue Code §6109(a)(3)*** and ***26 CFR §301.6109-1(c)***, a company's only obligation under the law is make a reasonable effort to request, at least twice, for a worker to disclose a social security number (SSN), taxpayer identification number (TIN) or employer identification number (EIN).

WTP Form #2, 7.H

27. Ordinary American workers, as **"Protected Individuals,"** have no lawful duty to provide a SSN, TIN or EIN to a company. Having been refused, a company need only follow the instruction given at ***26 CFR §301.6109-1***...."*When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating.*"

WTP Form #2, 7.I

28. Ordinary American workers are not required under ***26 USC Subtitle A or 31 CFR § 215.9***, to submit any federal Form W-4 withholding certificate (or its equivalent) unless

volunteering to have amounts withheld from pay for taxes, fees or other charges.

WTP Form #2, 7.J

29. Pursuant to ***31 CFR § 215.11*** and ***26 USC Subtitle A***, absent a worker's voluntary, written consent, ordinary American workers are not subject to withholding.

WTP Form #2, 7.K

30. Pursuant to ***26 USC § 3402(p)(3)(A)*** and ***31 CFR §215.2(n)(1)***, workers are under no legal obligation to permit amounts to be withheld nor enter into voluntary withholding agreements with their companies, consequently such workers are not required by statute to submit IRS **Form W-4** (or its equivalent) for that reason.

WTP Form #2, 7.L

31. Pursuant to ***26 CFR §31.3402(p)-1(b)(2)***, either the Entity or the worker may terminate the W-4 Agreement (or its equivalent) at any time by furnishing a signed, written notice to the other.

WTP Form #2, 7.M

32. Pursuant to ***29 USC Chapter 14 The Age Discrimination in Employment Act of 1967 §623(a)(1)***, no law requires the applicant/worker to disclose age or birth date since it is unlawful for the Entity to fail or refuse to hire or to discharge a worker or otherwise discriminate against a worker because of one's age.

WTP Form #2, 7.N

33. Ordinary American workers are not **'employees'** as defined in ***26 USC § 3401(c), § 3121(d) and § 3306(i)*** *"an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency orinstrumentality of any one or more of the foregoing; also includes an officer of a corporation."*

WTP Form #2, 7.O

34. Most American companies are not a duly authorized **"Withholding Agent"** as defined in ***IRC §7701(a)16*** and ***26 CFR §301.7701-16.*** As such, these companies lack any lawful authority to withhold amounts for federal and/or state taxes, fees or other charges, without the worker's voluntary written consent.

WTP Form #2, 7.P

35. Most American workers are not subject to withholding under ***26 USC §§1441 through 1446*** because they are not "nonresident aliens".

WTP Form #2, 7.Q

36. As required by ***IRC §6301***, most American companies have not received a written delegation of authority from the Secretary to collect from the worker, the taxes imposed by

the internal revenue laws and the Secretary has not established any such authority by regulation.

WTP Form #2, 7.R

37. As required by ***IRC §6201***, most American companies have not received a written delegation of authority from the Secretary to make inquiries, determinations and assessments against their workers pertaining to the taxes (including interest, additional amounts, additions to the tax, and assessable penalties) that may be imposed by Title *26 USC*.

WTP Form #2, 7.S

38. Ordinary American companies do not provide to their workers, taxable income as defined in ***26 CF §1.863-1(c)*** from a taxable source defined in the operative section of ***26 CFR 1.861-(f)(i).*** Therefore these workers are outside the venue of and not subject to the jurisdiction of ***26 USC*** and ***26 CFR.***

WTP Form #2, 7.T

39. Pursuant to ***26 USC § 6041***, most American companies are not required to make returns or statements of payments regarding income derived by their workers.

WTP Form #2, 7.U

40. Most American companies are NOT required to file an *IRS Form 8655 Reporting Agent Authorization* by any federal or state tax agency

(specific to each of their ordinary American workers), therefore it has no filing or reporting requirement regarding those workers.

WTP Form #2, 7.V

41. In order to withhold, a company must enter into Standard Agreement with the Secretary
of the Treasury and Fiscal Assistant Secretary (or his delegates) pursuant to ***31 CFR Subpart B-Standard Agreement §215.6*** regarding withholding from each specific worker. Without this Agreement, the company is NOT authorized by law to withhold any federal and/or income taxes or employment taxes from the worker.

WTP Form #2, 7.W

42. Pursuant to ***26 CFR § 301.7512-1(d)***, in order to withhold taxes from a worker <u>without his consent</u>, the IRS Director has must order in writing, or order personally hand-deliver to a company, via internal revenue officer or employee, a judicial court order ordering such withholding.

WTP Form #2, 7.Y

43. Most American workers are classified as a 'non-covered' workers, and therefore are not subject to the *Federal Insurance Contributions Act (FICA)* commonly known as Social Security since the worker cannot be compelled to register for, or participate in, such government entitlement programs. Such authority to require such from a worker is a power which "*obviously*

lie(s) outside the orbit of congressional power." ***Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 55 S. Ct. 758 (1935).***

WTP Form #2, 7.Z

44. State-federal agreements for the administration of qualified state income taxes are authorized by Part 215 of 31 CFR. This authority applies exclusively to federal government agencies and personnel; it does not extend to general population in states of the Union. Pursuant to ***31 CFR §215.9*** and ***26 USC Subtitle A***, most American companies lack the lawful authority to take amounts from their workers' pay since their worker have not given their **voluntary**, written consent to do so.

WTP Form #2, 7.AA

45. Without a Standard Agreement with the Secretary of the Treasury and the Fiscal Assistant Secretary (or his delegates) pursuant to ***31 CFR Subpart B-Standard Agreement §215.6***; a company lacks lawful authority to take amounts from a worker's pay.

WTP Form #2, 7.BB

46. Without a ***Section 218 Voluntary Agreement*** for coverage of social security, specific to each worker, pursuant to ***42 USC 418***, a company lacks the lawful authority to take amounts from a worker's pay.

WTP Form #2, 7.CC

47. No American living in a state is "subject to the jurisdiction of Congress," generally speaking, unless one is a nonresident alien involved in immigration proceedings or nonresident employee; or one is a federal officer, federal employee; active member of the Armed Forces; elected federal official; mariner, Indian ward, engaged in interstate commerce, or participating in federal insurance.

WTP Form #2, 7.FF

48. The legal authority to take any amount from a worker's pay for any federal and state taxes, trusts, benefits, programs, social security deductions, non-judicial penalties, garnishments, liens or levies upon the worker's earnings reauires the worker's voluntary, written consent or verified signature on *IRS Form 2159-Payroll Deduction Agreement.*

WTP Form #2, 7.GG

49. The ***Privacy Act of 5 U.S.C. Annotated 552(a)*** states, "It shall be unlawful...to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his/her social security number."

WTP Form #3, page 1.

50. The House Congressional Record, March 27, 1943, page 2580 states, *"income tax is an excise tax with respect to certain federal*

activities and privileges. The income is not the subject of the tax...."

WTP Form #3, page 1.

51. Labor is a fundamental unalienable right and is protected under the U.S. Constitution11 and fundamental rights under the U.S. Constitution CANNOT be taxed , therefore money CANNOT be withheld for taxes. ***Butcher's Union Co. v Crescent City Co. 111 US 746, at 758-757 (1884) [Labor] 2 Murdock v Pennsylvania. 319 US 105, at 113 (1 943) [no tax on Labor]***

WTP Form #3, page 2.

52. "The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers and not to nontaxpayers. The latterare without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of the law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws." ***Economy Plumbing and Heating v. United States. 470 F.2d 585, at 589 (Ct.Cl.1972).***

WTP Form #3, page 2.

53. The income tax is not a tax on "income", it is an excise tax on privileged activities. Engaging in excise taxable activities makes one a taxpayer. The code only applies to taxpayers. Therefore, any type of list defining the source from which income is derived in the code is

mooted by a presumption of a lawful 'nontaxpayer' status. *"Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege."* ***Jack Cole Co. v. MacFarland, 337 S.W. 2d 453, 455-456 (Tenn.1960).*** **[explanation added.]**

WTP Form #3, page 2.

54. U.S. Citizens cannot be compelled to register in and subsequently participate in government entitlement programs, as the authority to require such from Citizens is a power which *"obviously lie(s) outside the orbit of congressional power."*
***Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 55 S. Ct. 758* (1935).**

WTP Form #3, page 2.

55. "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for th e enjoyment of which an excise cannot be imposed." ***Redfield*** *(cite omitted)*

WTP Form #3, page 2.

56. "The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry."
48 Am Jur 2d, Section 2, page 80.

WTP Form #3, page 2.

57. *"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."* ***Murdock v. Pennsylvania, 319 U.S. 105, 113 (1943.)***

WTP Form #3, page 2.

58. *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."* ***United States Constitution, 9th Amendment.***

WTP Form #3, page 2.

59. *"Our system of taxation is based upon voluntary assessment and payment, not upon distraint."* ***Flora v. United States, 362 U.S. 145, 176 (1960).***

WTP Form #3, page 2.

60. No law requires a worker to file a Form W-4 (or its equivalent). In ***U.S. v. Mobil Oil Co., 82-1 USTC para. 9242,U.S.D.C. ND Tex. Dallas 1981 CA. 3-800438-G***, the court ruled that an Entity does not even have to send a Form W-4 or other employment forms to the Internal Revenue Service unless served with a judicial court-ordered summons to do so.

WTP Form #4, 7.I

61. Most American workers and independent contractors are not engaged as a **'trade or business'** as defined in ***IRC §7701(a)(26):*** *"includes the performance of the functions of a public office,"* therefore the such individuals are not required under ***IRC §6041(a)*** to file any return, statement or list to the government.

WTP Form #4, 7.N

62. Pursuant to ***Paperwork Reduction Act Notice (Public Law 104-13)***, the instructions clearly state that one is not required to respond to a collection of information that does not display a (valid) OMB control number. IRS **Form W-9, Request for Taxpayer Identification Number and Certification**, does not have an OMB number.

WTP Form #5, 6.A

63. Pursuant to ***IRC §6722(b)(2)***, no penalty can be imposed upon a company or Payee for failure to include information (such as a SSN, TIN , or EIN) because the collection of such information on IRS Form W-9 is by law, voluntary not mandatory.

WTP Form #5, 6.C

64. A TIN is *not* required for Protected Individuals who do not receive taxable income and are not required to report taxable income to the IRS. No law requires a Protected Individual to complete an IRS Form W-9 or to furnish a social security number to obtain labor or to maintain a

labor contract. *Title 8 USC § 1324b* states that "Protected Individuals" cannot be required by any entity to provide any specific documents in order to work in America. Per *26 CFR 301.61091(c)*, a company can request either item and needs only to sign an affidavit stating that the request has been made. No federal or state statute authorizes anyone to determine who is subject to any revenue tax.

WTP Form #6, (bottom)

65. A Protected Individual who is not required to furnish a TIN includes, but is not necessarily limited to, an individual who is domiciled in one of the states of the union of the fifty united states of America, and does **not** live, work, or derive income from any source within the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, or any other Territory or enclave under the sovereignty within the federal United States, which entity has its origin and jurisdiction from Article 1, Section 8, Clause 17 of the U.S. Constitution and *26 CFR 1.911-2(g)*.

WTP Form #6, (bottom)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
Plaintiff,	
v.	Civil No. 1:07-cv-352-TJM-RFT
ROBERT L. SCHULZ; WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.; and WE THE PEOPLE CONGRESS, INC.,	
Defendants.	

STATEMENT UNDER LOCAL RULE 7.1(a)(3) NORTHERN DISTRICT OF NEW YORK

Response to Defendants' Statement Of Material Facts

22. Deny. Defendants profit from the promotion sale, and distribution of their "Legal Termination of Tax Withholding" package.[1] Although defendants provide the program for free,[2] they also charge, and request a $20 payment for the materials.[3] Defendants also advertise membership in their organization,[4] and solicit sales of their other products with the "Legal Termination of Tax Withholding" package.[5] The stated purpose of the "Legal Termination of Tax

Withholding" package is to "instruct[] [] companies, workers and independent contractors on how to legally stop withholding, filing and paying the tax."[4]

[1]Schulz Decl. #1 Exh. C (pp. 2 & 11.)

[2]Schulz Decl. #5 Exhs. B-F.

[3]Schulz Decl. #1 Exh. C (pp. 2 & 11); Schulz Decl. #5 Exhs. H-I.

[4]Schulz Decl. #1, Exhs. B(2) (p. 15.)

[5]Schulz Decl. #1, Exhs. B(2) (pp. 7-15, & 20), C (pp. 2 & 11).

[6]Schulz Decl. #6 Exh. B (p. 1.)

23. Deny. Defendants provide the program for free[7] and they also charge for participation by requesting a $20 donation for the materials.[8] For a $500 annual fee, defendants also offer to represent employers that "have ceased, or intend to cease earnings withholding of all federal taxes..."[9] Defendants charge a $250 annual fee for individuals who agree to "stop filing federal tax returns and/or cease the payment of any alleged federal income taxes."[10] Defendants make the following statement with these materials, which supports that the program is intended for "tax avoidance": (1) "WTP-LDA intends also to represent natural person who have stopped, or intend to stop filing federal tax returns and/or cease the payment of any alleged federal income taxes, until, ... the federal government responds to four Petitions for Redress;"[11] (2) "eliminate payment of 'matching' employment taxes [contributions];"[12] (3) "New worker can legally eliminate all federal and state withholding of income taxes and employment

taxes ..."[13] and (4) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[14]

24. Deny. Defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary. This fact simply reargues their contention that shorthand reference "Tax Termination Package" in the complaint is inflammatory. There is no dispute that defendants' program is entitled "Legal Termination of Tax Withholding" package.[15]

[7] Schulz Decl. #5 Exhs. B-F.
[8] Schulz Decl. #1 Exh. C (pp. 2 & 11); Schulz Decl. #5 Exhs. H-I.
[9] Schulz Decl. #1 ¶ 4, Exhs. B(2) p. 7.
[10] Schulz Decl. #1 ¶ 4, Exhs. B(2) pp. 7-13, Exh. C (p. 5.)
[11] Schulz Decl. #1 ¶ 4, Exhs. B(2) p. 7.
[12] Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.
[13] Schulz Decl. #1 Exh. C (p. 7)
[14] Schulz Decl. #1 Exh. C (p. 8.)

25. Deny. Defendants offer a "Legal Termination of Tax Withholding" to participants, which advertises tax benefits, including that customers can stop paying taxes or filing returns.[16]

26. Deny. Defendants provide the program for free[17] and they also charge for participation by requesting a $20 "donation" for the materials.[18] For a $500 annual fee, defendants also offer to represent employers that "have ceased, or intend to cease earnings withholding of all federal taxes..."[19] Defendants charge a $250 annual fee for individuals who agree to "stop filing federal tax returns and/or cease the payment of any alleged federal income taxes."[20]

27. Deny. Defendants market the program at seminars and on the internet.[21]

28. The United States denies this allegation, and contends no response is required because defendants' "material fact" amounts to a legal argument that is not supported by citations to the record as required by L.R. 7.1.

[15]Schulz Decl. #1, Exhs. B(2) (pp. 7-15, & 20), C (pp. 2 & 11).

[16]Schulz Decl. #1, Exhs. B(2) (pp. 7-15, & 20), C (p. 7.) The United States contends that defendants are inappropriately arguing legal issues and conclusions presented in plaintiff's motion for summary judgment. Defendants' facts are simply denials of the United States' argument, recast as a "denied fact" for which the defendants offer no support.

[17]Schulz Decl. #5 Exhs. B-F.

[18]Schulz Decl. #1 Exh. C (pp. 2 & 11); Schulz Decl. #5 Exhs. H-I.

[19]Schulz Decl. #1 ¶ 4, Exhs. B(2) p. 7.

[20] Schulz Decl. #1 ¶ 4, Exhs. B(2) pp. 7-13, Exh. C (p. 5.)

[21] Schulz Decl. #1 Exh. C (pp. 1-11); Schulz Decl. #6 Exhs. B-F.

29. Deny. Defendants make the following statement with their materials: (1) "WTPLDA intends also to represent natural person who have stopped, or intend to stop filing federal tax returns and/or cease the payment of any alleged federal income taxes, until, ... the federal government responds to four Petitions for Redress;"[22] (2) "eliminate payment of 'matching' employment taxes [contributions];"[23] (3) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[24] and (4) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[25] The second paragraph of defendants' "material fact" amounts to a legal argument that is not supported by citations to the record as required by L.R. 7.1.

30. Deny. Defendants' WTP Form #12, *inter alia*, explains to participants that "VOLUNTARY written consent [is required] to participate in [] IRS programs."[26] Defendants materials do no require a "rigorous" review by "tax professionals (CPAs, attorneys, accountants, etc.)." Defendants' materials state: (1) "We respectfully request that you [the participant] subject the information to a rigorous review;"[27] (2) "Attached is an important

memorandum and packet of information regarding income and employment taxes. The information is the result of tax professionals: attorneys, paralegals, CPA's, ... and numerous expert tax law researchers ... We

[22]Schulz Decl. #1 ¶ 4, Exhs. B(2) p. 7.

[23]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[24]Schulz Decl. #1 Exh. C (p. 7)

[25]Schulz Decl. #1 Exh. C (p. 8.)

[26]Schulz Decl. #1 Exh. B(2) (p. 19); Schulz Decl. #6 Exh. Q (p. 1.)

[27]Schulz Decl. #1 Exh. B(2) (p. 15); Gordon Decl. Exh. 8.

respectfully request that you subject the information to a rigorous review;"[28] (3) "Many of you will discover the Entity [employer] has been negligently advised by so-called tax professionals ... 'the law requires the Entity to obtain a completed IRS Form W-4' ... These so-called 'tax-professionals' are liable negligence, malpractice, and misfeasance when the Entity relies on the professional's misrepresentation of federal and state law ... Ask the Entity and its 'tax professionals' to put in writing the specific laws to substantiate their false claims;"[29] (4) "you may consider retaining professional service to decide whether to file a lawsuit ... against the Entity's tax professionals;"[30] (5) "Let me further remind the Entity that no computer-generated IRS letter or contrary advice from a tax professional or attorney shall abrogate or supercede my sworn statement ... the Entity lacks legal authority [] for withholding any federal or state 'income' taxes,

'employment' taxes, 'social security' ... without my consent;"[31] and (6) "The Entity continues to unlawfuliy take amounts from my pay based on the misrepresentation of federal and/or state law by the Entity's incompetent employees, officers, agents and/or the Entity's tax professionals (attorneys and CPAs)."[32] In addition, defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary.

31. Deny. Defendants' materials make the following statements regarding the constitutionality of the income tax: (1) "the individual income tax is fraudulent in its origin and

[28]Schulz Decl. #1 Exh. B(2) (p. 18.)
[29]Schulz Decl. #1 Exh. B(2) (p. 20.)
[30]Schulz Decl. #1 Exh. B(2) (p. 21.)
[31]Schulz Decl. #1 Exh. B(2) (p. 25.)
[32]Schulz Decl. #1 Exh. B(2) (p. 55.)

illegal in its operation;"[33] (2) "the income tax is a tax on labor prohibited by the 13th Amendment;"[34] (3) "Congress lacks the authority to legislate an income tax ... except in the District of Columbia;"[35] (4) "the IRS is prohibited by the 4th and 5th Amendment from compelling people to sign an income tax return;"[36] (5) "the 16th Amend. did not come close to being ratified;"[37] and (6) "the internal revenue code is void for vagueness."[38]

32. Deny. Defendants' materials state that the "WTP-LDA intends also to represent natural person who have stopped, or intend to stop filing federal tax returns and/or cease the payment of any alleged federal income taxes, until, ... the federal government responds to four Petitions for Redress."[39] Defendants' statement that they require a "rigorous review by tax professionals (CPAs, attorneys, accountants, etc.)" has no support in the record.

33. Deny. Defendants' materials state, *inter alia*, that: (1) "unless one is a foreigner working here or a citizen of the U.S.A. earning his money abroad he is not liable for the income tax;"[40] (2) "For U.S. citizens living and working exclusively in the 50 states, and receiving all income from within the 50 states, ... [the regulations] do not show such income to be taxable;"[41] (3) "the [employer] ... does not provide taxable income . . . from a source defined in . . . 26 CFR

[33]Schulz Decl. #1 Exh. B(2) (p. 4.)

[34]Schulz Decl. #6 Exh. R (p. 1.)

[35]Schulz Decl. #6 Exh. R (p. 8.)

[36]Schulz Decl. #6 Exh. R (p. 12.)

[37]Schulz Decl. #6 Exh. R (p. 17.)

[38]Schulz Decl. #6 Exh. R (p. 34.)

[39]Schulz Decl. #1 ¶ 15, Exh. B(2) (p. 7); Docket No. 12 (p. 9.)

[40]Schulz Decl. #1 Exh. B (p. 38 on Pacer) (labeled as p. 36.)

[41]Schulz Decl. #1 Exh. B (p. 30 on Pacer) (labeled as p. 38.)

§ 1.861-1(f)(l);"[42] and (4) "I do not derive taxable

income ... from a taxable source defined in ... 26 CFR § 1.861-1(f)(l)."[42]

34. Deny. Defendants' materials include altered documents where they have written in, *inter alia*, "I do not Volunteer to Participate" and "I do not consent."[44] In addition, defendants' customers have submitted WTP Forms "revoking [their] signature on all government documents."[45]

35. Deny. Defendants' materials state that the "WTP-LDA intends also to represent natural person who have stopped, or intend to stop filing federal tax returns and/or cease the payment of any alleged federal income taxes, until, ... the federal government responds to four Petitions for Redress."[46] Defendants' state in their motion to dismiss that "Schulz began to exercise his other First Amendment Rights and publicly advocate that that [sic] People has [sic] a Natural Right ... to retain their money until their Grievances were Redressed."[47] The United States further denies that defendants' materials require a 'rigorous review by tax professionals."[48]

36. Deny. Defendants materials state that customers can opt-out of paying taxes.

[42]Schulz Decl. #1 Exh. B(2) (p. 28.)

[43]Schulz Decl. #1 Exh. B(2) (p. 30); Dietz Decl. Exh. B.

[44]Schulz Decl. #6 Exh. P.

[45]Celauro Decl. ¶ 7(e).

[46]Schulz Decl. #1 ¶ 4, Exhs. B(2) p. 7.

[47]Docket No. 12 (p. 4.)

[48]Schulz Decl. #1 Exh. B(2) (pp. 15, 18, 20, 21, 25 & 55.) *See*

Response to Material Fact #30. See also Defendants' Response to the Unites States' Statement of Undisputed Materials Facts #8: Defendants state that the employer should "subject the materials to rigorous review, *obviously* by tax professionals... Defendants obviously meant the review should be by tax advisors due to the nature of the subject." This statement is unsupported and demonstrates that defendants are willfully misleading this Court by continuously asserting this "undisputed fact."

Defendants' materials state that customers can (1) "eliminate payment of 'matching' employment taxes [contributions];"[49] (2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[50] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[51]

37. Deny. The United States denies this allegation, and contends no response is required because defendants' "material fact" amounts to a legal argument that is not supported by citations to the record as required by L.R. 7.1. Notwithstanding, defendants' materials state that customers can (1) "eliminate payment of 'matching' employment taxes [contributions];"[52] (2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[53] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further

returns."[54]

38. Deny. Defendants materials state that customers can use their forms to stop paying taxes and filing returns and that an individual can revoke his or her requirement to pay taxes or file returns. Defendants' materials state that customers can (1) "eliminate payment of

[49]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[50]Schulz Decl. #1 Exh. C (p. 7)

[51]Schulz Decl. #1 Exh. C (p. 8.)

[52]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[53]Schulz Decl. #1 Exh. C (p. 7)

[54]Schulz Decl. #1 Exh. C (p. 8.)

'matching' employment taxes [contributions];"[55] disputes that defendants' materials require a "rigorous review by tax professionals," as this quote is derived paragraph #8 of Defendants' Response to the United States' Und(2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[56] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[57] In addition, defendants' customers have submitted WTP Forms "revoking [their] signature on all government documents."[58] Moreover, the United States isputed Materials Fact and is unsupported by record evidence as

required by L.R. 7.1."[59]

39. Deny. Defendants' materials state that the tax laws are unconstitutional and only apply to foreign source income. Schulz's March 13, 2003, letter states that "the individual income tax is fraudulent in its origin and illegal in its operation."[60] In the "Memo to Entities," defendants state that "The individual income tax is fraudulent in its origin and enforced without legal authority."[61] Defendants' "Statement of Facts and Beliefs" make the following statements:

(1) "the income tax is a tax on labor prohibited by the 13th Amendment;"[62] (2) "Congress lacks

[55]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[56]Schulz Decl. #1 Exh. C (p. 7)

[57]Schulz Decl. #1 Exh. C (p. 8.)

[58]Celauro Decl. ¶ 7(e).

[59]See fn. 48.

[60]Schulz Decl. #1 Exh. B(2) (p. 4.)

[61]Schulz Decl. #1 Exh. B(2) (p. 16.)

[62]Schulz Decl. #6 Exh. R (p. 1.)

the authority to legislate an income tax ... except in the District of Columbia;"[63] (3) "the IRS is prohibited by the 4th and 5th Amendment from compelling people to sign an income tax return;"[64] (4) "the 16th Amend. did not come close to being ratified;"[65] and (5) "the internal revenue code is void for vagueness."[66] As early as April 15, 2001, Schulz mailed to Congress a letter stating that "The 16th Amendment (the 'income tax' amendment) was illegally and fraudulently ratified in 1913."[67] With regard to payment

of tax on domestic income, defendants' materials make the following statements: (1) "unless one is a foreigner working here or a citizen of the U.S.A. earning his money abroad he is not liable for the income tax;"[68] (2) "For U.S. citizens living and working exclusively in the 50 states, and receiving all income from within the 50 states, ... [the regulations] do not show such income to be taxable;"[69] (3) "the [employer] ... does not provide taxable income . . . from a source defined in . . . 26 CFR § 1.861-1(f)(l);"[70] and (4) "I do not derive taxable income ... from a taxable source defined in ... 26 CFR § 1.861-1(f)(l)."[71]

40. Deny. Defendants materials state that participants can voluntarily stop filing tax returns. Defendants' materials state "after terminating withholding ... the company has no

[63]Schulz Decl. #6 Exh. R (p. 8.)

[64]Schulz Decl. #6 Exh. R (p. 12.)

[65]Schulz Decl. #6 Exh. R (p. 17.)

[66]Schulz Decl. #6 Exh. R (p. 34.)

[67]Schulz Decl. #4 Exh. B (p. 1.)

[68]Schulz Decl. #1 Exh. B (p. 38 on Pacer) (labeled as p. 36.)

[69]Schulz Decl. #1 Exh. B (p. 40 on Pacer) (labeled as p. 38.)

[70]Schulz Decl. #1 Exh. B(2) (p. 28.)

[71]Schulz Decl. #1 Exh. B(2) (p. 30); Dietz Decl. Exh. B.

further reporting requirements under U.S. law .... there will be NO further returns."[72] In addition, defendants' customers have submitted WTP Forms "revoking [their] signature on all

government documents."[73] As early as April 15, 2001, Schulz mailed letter to Congress stating that "There is no law or regulation that requires most citizens to file a tax return, pay tax, or have money withheld from their pay."[74] Moreover, the United States disputes that defendants' materials require a "rigorous review by tax professionals," as this quote is derived paragraph #8 of Defendants' Response to the United States' Undisputed Materials Fact and is unsupported by records evidence as required by L.R. 7.1.[75]

41. Deny. Defendants' materials are a rehash of anti-tax arguments that have been rejected by every court considering these positions. First, defendants advance the "Section 861 Argument" in their materials,[76] which has been rejected as frivolous.[77] Second, defendants' claim that the "16th Amendment was fraudulently ratified,"[78] and Schulz acknowledges this position has been repeatedly rejected.[79]

[72]Schulz Decl. #1 Exh. C (p. 8.)

[73]Celauro Decl. ¶ 7(e).

[74]Schulz Decl. #4 Exh. B (p. 1.)

[75]See fn. 48.

[76]Schulz Decl. #1 Exh. B (pp. 38 & 40 on Pacer) (labeled as pp. 36 & 38); Schulz Decl. #1 Exh. B(2) (pp. 28 & 30); Dietz Decl. Exh. B; Schulz Decl. #4 ¶¶ 4-7, & 11-12.

[77]*United States v. Bell*, 414 F.3d 474, 475 (3rd Cir. 2005).

[78]Schulz Decl. #4 Exh. B (p. 1.) [79]Schulz Decl. #2(2) ¶¶ 19-25 (Schulz collects numerous court decisions rejecting the positions asserted by Benson and Becraft, from whom he took this idea); *see also United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (sustaining Benson's conviction for tax evasion); Gordon Decl. Exhs. 19, 23-25. *In re Becraft*, 885

F.2d 547 (9th Cir. 1989) (sanctioning attorney for asserting the "frivolous" argument that the "[16th] Amendment does not authorize a direct non-apportioned income tax").

42. Deny. Defendants know or should have known their statements regarding the federal income tax laws are false or fraudulent. First, defendants advertised in U.S.A. Today the fact that numerous employers had ceased withholding federal taxes from their worker's pay, including Richard Simkanin, David Bossett, and Al Thomson.[80] According to defendants, U.S.A. Today informed defendants that the newspaper would not run future ads because the previous ones "promoted illegal activities."[81] In addition, defendants regularly advertised the criminal prosecution of Simkanin and Thompson, who were both indicted for failing to file tax returns and withhold federal taxes from their employees.[82] Thereafter, Thompson was enjoined from failing to withhold federal taxes from his employees' wages and Bossett was enjoined from promoting the "Section 861 Argument."[83] Although Schulz was aware of Simkanin's criminal trial in 2004, and testified at that trial,[84] Schulz continues to instruct employers that "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[85]

Defendants knew or should have known the falsity of the "Section 861 Argument" because John B. Kotmair, Jr., who defendants advertised as an expert,[86] was convicted and sentenced to a two-year prison term for willfully failing to file income tax returns in violation of

[80]Gordon Decl. Exh. 24.

[81]Gordon Decl. Exh. 3.

[82]Gordon Decl. ¶¶ 32-34; Exhs. 23 & 25.

[83]Gordon Decl. ¶¶ 32-34.

[84]Gordon Decl. ¶¶ 32-34. *United States v. Simkanin*, 420 F.3d 397 (5th Cir. 2005)

[85]Schulz Decl. #1 Exh. C (p. 8.)

[86]Gordon Decl. Exh. 1.

26 U.S.C. § 7203 for 1975 and 1976,[87] and enjoined from promoting his own scheme.[88]

Defendants knew or should have known the falsity of the "Section 861 Argument" because Larken Rose, who defendants advertised as an expert,[89] was convicted of willful failure to file income tax returns in violation of 26 U.S.C. § 7203, and was sentenced to a term of fifteen months confinement.[90]

Defendants knew or should have known the falsity of their claim that the 16th Amendment was "fraudulently ratified" because Schulz acknowledges that he is aware that Larry Becraft and William Benson have been civilly and criminally sanctioned for asserting that argument.[91]

43. Defendants' "factual statement" contains no citation to the record as required by

L.R. 7.1, and therefore no response is necessary.

44. Defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary.

45. Deny. Defendants forms state that participants can (1) "eliminate payment of 'matching' employment taxes [contributions];"[92] (2) "New workers can legally eliminate all

[87]*Kotmair v. Commissioner*, 86 T.C. 1253 (1986).

[88]Gordon Decl. Exh. 2.

[89]Gordon Decl. Exh. 1.

[90]Gordon Decl. ¶ 7; *United States v. Rose*, 95 A.F.T.R.2d (RIA) 2648 (M.D. Pa. May 25, 2005); Schulz Decl. # 10 Exh. A.

[91]Schulz Decl. #2(2) ¶¶ 19-25 (Schulz collects numerous court decisions rejecting the positions asserted by Benson and Becraft, from whom he took this idea); *see also United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (sustaining Benson's conviction for tax evasion); Gordon Decl. Exhs. 19, 23-25. *In re Becraft*, 885 F.2d 547 (9th Cir. 1989) (sanctioning attorney for asserting the "frivolous" argument that the "[16th] Amendment does not authorize a direct non-apportioned income tax").

[92]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[93] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[94]

46. Deny. Defendants' customers have used the WTP Forms to forestall collection,[93] stop filing tax returns,[94] and hinder the administration of the internal revenue laws.[95] Moreover, the United States disputes that defendants' materials require a "rigorous review by tax professionals," as this quote is derived paragraph #8 of Defendants' Response to the United States' Undisputed Materials Fact and is unsupported by records evidence as required by L.R.

47. Deny. Defendants forms state that participants can (1) "eliminate payment of 'matching' employment taxes [contributions];"[96] (2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[100] and (3) "after terminating withholding ... the

[93]Schulz Decl. #1 Exh. C (p. 7)

[94]Schulz Decl. #1 Exh. C (p. 8.)

[95]*Celauro v. United States*, 411 F. Supp. 2d 257 (E.D. N.Y. 2006); *Celauro v. United States*, 371 F. Supp. 2d 219 (E.D. N.Y. 2005) (taxpayer submitted altered withholding agreement *in lieu* of a Form W-4); *Karkabe v. Comm'r*, T.C. Memo. 2007-115; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9; Gordon Decl. ¶¶ 35-40, Exhs. 26-28. [96]Gordon Decl. ¶ 38.

[97]Gordon Decl. Exhs. ¶¶ 34-40, Exhs. 25-29; Engel Decl. ¶¶ 3-6; Nelson Decl. ¶¶ 3-5; Weaver Decl. ¶¶ 3-6; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9. [98]See fn. 48. [99]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[100]Schulz Decl. #1 Exh. C (p. 7)

company has no further reporting requirements under U.S. law .... there will be

NO *further returns.*"[101] Defendants claims regarding these benefits are false.[102]

48. Deny. Defendants' forms are worthless[103] and their customers have been harmed by relying on the false statements in defendants' materials.[104]

49. Defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary.

50. Defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary. Notwithstanding, defendants have misled customers and this Court. Defendants argue in their motion to dismiss that defendants "know of no company that has stopped withholding after receiving the documents in the Blue Folder."[105] On their webpage, defendants state that "we are hearing daily about many individual who have filed the forms and their employers have, in fact, stopped withholding."[106] Defendants further provide an example of "another case involving a major automobile manufacturer in Detroit that has stopped withholding for several hundred of its employees."[107]

[101]Schulz Decl. #1 Exh. C (p. 8.)

[102]Schulz Decl. #2(2) ¶¶ 19-25 (Schulz collects numerous court decisions rejecting the positions asserted by Benson and Becraft, from whom he took this idea); *see also United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (sustaining Benson's conviction for tax evasion); Gordon Decl. Exhs. 19,

23-25. *In re Becraft*, 885 F.2d 547 (9th Cir. 1989) (sanctioning attorney for asserting the "frivolous" argument that the "[16th] Amendment does not authorize a direct non-apportioned income tax").

[103]Docket No. 12 ("Defendants know of no company that has stopped withholding after receiving the documents in the Blue Folder." (Br. p. 22))

[104]Engel Decl. ¶¶ 3-6; Nelson Decl. ¶¶ 3-5; Weaver Decl. ¶¶ 3-6; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9.

[105]Docket No. 12 (p. 22.)

[106]Schulz Decl. #1 Exh. H (p. 2.)

[107]Schulz Decl. #1 Exh. H (p. 2.)

51. Deny. Defendants' customers have failed to file returns[108] and pay the proper amount of taxes.[109]

52. The United States admits that defendants' forms have numerous legal citations. The United States denies the remaining parts of this "material fact," which is neither factual nor supported by record evidence as required by L.R. 7.1.

53. Deny. Defendants' "factual statement" contains no citation to the record as required by L.R. 7.1, and therefore no response is necessary. Notwithstanding, defendants unsupported statement is inconsistent with statement on their webpage, specifically that "we are hearing daily about many individual who have filed the forms and their employers have, in fact, stopped

withholding."[110] Defendants further provide an example of "another case involving a major automobile manufacturer in Detroit that has stopped withholding for several hundred of its employees."[111]

54. Deny. Defendants forms state that participants can (1) "eliminate payment of 'matching' employment taxes [contributions];"[112] (2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[113] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further

[108]Gordon Decl. ¶ 38.

[109]Engel Decl. ¶¶ 3-6; Nelson Decl. ¶¶ 3-5; Weaver Decl. ¶¶ 3-6; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9.

[110]Schulz Decl. #1 Exh. H (p. 2.)

[111]Schulz Decl. #1 Exh. H (p. 2.)

[112]Schulz Decl. #1 ¶ 4. Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

[113]Schulz Decl. #1 Exh. C (p. 7)

returns."[114]

55. Deny. Defendants program delays collection, examination, and interferes with the internal revenue laws.[115]

56. Deny. Many of defendants' customers do not file income tax returns.[116] This fact is uncontested by defendants in the United States'

Statement of Undisputed Materials Facts, paragraphs 20-21, which defendants failed to deny with support in the record as required by L.R.

57. Defendants' "material fact" requires no response because there is no support in the record as required by L.R. 7.1.

58. Defendants' "material fact" requires no response because there is no support in the record as required by L.R. 7.1. In addition, defendants' "material fact" is not a fact, but is a legal conclusion.

59. Defendants' "material fact" requires no response because there is no support in the record as required by L.R. 7.1. Defendants' "material fact" is not a fact, but is a legal conclusion. In addition, the United States has already addressed the issue of whether defendants market and promoted the tax termination plan."[117]

60. Defendants' "material fact" requires no response because there is no support in the record as required by L.R. 7.1. In addition, defendants' "material fact" is not a fact, but is a legal conclusion.

[114] Schulz Decl. #1 Exh. C (p. 8.)

[115] Engel Decl. ¶¶ 3-6; Nelson Decl. ¶¶ 3-5; Weaver Decl. ¶¶ 3-6; Celauro Decl. ¶¶ 4-17; Deitz Decl. ¶¶ 2-9.

[116] Gordon Decl. ¶ 38.

[117] Paragraph 27, *supra*. Schulz Decl. #1 Exh. C (pp. 1-11); Schulz Decl. #6 Exhs. B-F.

61. Deny. Defendants provide instructions and WTP forms declaring that individual does not consent to have income taxes withheld. Defendants instruct participants to annex these forms to an IRS Form W-4."[118]

62. Deny. Defendants forms state that participants can (1) "eliminate payment of 'matching' employment taxes [contributions];"[119] (2) "New workers can legally eliminate all federal and state withholding of income taxes and employment taxes by giving written notice ... you do not elect to volunteer for withholding;"[120] and (3) "after terminating withholding ... the company has no further reporting requirements under U.S. law .... there will be NO further returns."[121]

63. Deny. Defendants' materials state that the tax laws are unconstitutional and only apply to foreign source income. Schulz's March 13, 2003, letter states that "the individual income tax is fraudulent in its origin and illegal in its operation."[122] In the "Memo to Entities," defendants state that "The individual income tax is fraudulent in its origin and enforced without legal authority."[123] Defendants' "Statement of Facts and Beliefs" make the following statements:

(1) "the income tax is a tax on labor prohibited by the 13th Amendment;"[124] (2) "Congress lacks

[118]Schulz Decl. #1 ¶ 5, Exhs. B(2) (pp. 15-21.)
[119]Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.
[120]Schulz Decl. #1 Exh. C (p. 7)
[121]Schulz Decl. #1 Exh. C (p. 8.)
[122]Schulz Decl. #1 Exh. B(2) (p. 4.)
[123]Schulz Decl. #1 Exh. B(2) (p. 16.)
[124]Schulz Decl. #6 Exh. R (p. 1.)

the authority to legislate an income tax ... except in the District of Columbia;"[125] (3) "the IRS is prohibited by the 4th and 5th Amendment from compelling people to sign an income tax return;"[126] (4) "the 16th Amend. did not come close to being ratified;"[127] and (5) "the internal revenue code is void for vagueness."[128] As early as April 15, 2001, Schulz mailed to Congress a letter stating that "The 16th Amendment (the 'income tax' amendment) was illegally and fraudulently ratified in 1913."[129] With regard to payment of tax on domestic income, defendants' materials make the following statements: (1) "unless one is a foreigner working here or a citizen of the U.S.A.

earning his money abroad he is not liable for the income tax;"[130] (2) "For U.S. citizens living and working exclusively in the 50 states, and receiving all income from within the 50 states, ... [the regulations] do not show such income to be taxable;"[131] (3) "the [employer] ... does not provide taxable income . . . from a source defined in . . . 26 CFR § 1.861-1(f)(l);"[132] and (4) "I do not derive taxable income ... from a taxable source defined in ... 26 CFR § 1.861-1(f)(l)."[133]

64. Defendants' "material fact" requires no response because there is no support in the record as required by L.R. 7.1. In addition, defendants' "material fact" is not a fact, but is a legal

[125]Schulz Decl. #6 Exh. R (p. 8.)
[126]Schulz Decl. #6 Exh. R (p. 12.)
[127]Schulz Decl. #6 Exh. R (p. 17.)
[128]Schulz Decl. #6 Exh. R (p. 34.)
[129]Schulz Decl. #4 Exh. B (p. 1.)
[130]Schulz Decl. #1 Exh. B (p. 38 on Pacer) (labeled as p. 36.)

[131] Schulz Decl. #1 Exh. B (p. 40 on Pacer) (labeled as p. 38.)
[132] Schulz Decl. #1 Exh. B(2) (p. 28.)
[133] Schulz Decl. #1 Exh. B(2) (p. 30); Dietz Decl. Exh. B.

conclusion and their opinion.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v. **Case 07-3729-cv**

ROBERT L. SCHULZ;
WE THE PEOPLE FOUNDATION FOR
CONSTITUTIONAL EDUCATION, INC.;
WE THE PEOPLE CONGRESS, INC.

Defendants-Appellants

DECLARATION BY ROBERT L. SCHULZ IN SUPPORT OF APPLICATION TO ADD TO THE ADDENDUM

ROBERT L. SCHULZ, under penalty of perjury, declares:

1. I am an Appellant in the matter captioned above and I make this Declaration in support of Defendants' motion to add to the Addendum to the Petition for En Banc Hearing, which originally included a copy of the Panel's decision dated February 22, 2008.

2. The Petition for En Banc Hearing includes an Argument in support that relates to the Conduct of Panel Judges during oral argument. (Petition, 4-7).

3. The Panel heard oral argument on February 4, 2008. Soon after, I obtained from the Clerk's Office, a CD containing an audio file of the oral argument. A true copy of the CD in included in the proposed Addendum.

4. In good faith, I listened to the audio file and prepared a type-written transcript of the actual words spoken during the oral argument. A copy of the Transcript is included in the proposed Addendum

5. In addition, the proposed Addendum includes a courtesy copy of the decision in We The People v United States, 485 F.3d 140 (D.C. Cir., which is referred to on page 7 and 15 of the Petition. The decision includes a concurring opinion by Judge Rogers that Appellants' have relied on in support of their first and third arguments in the brief.

6. I respectfully request an order granting the motion to add an Addendum to include the CD, the Transcript and the court decision.

Dated: April 7, 2008

/s/
ROBERT L. SCHULZ
2458 RIDGE ROAD
QUEENSBURY, NY 12804
518-656-3578

Appendix T

Transcript
Oral Argument Before the U.S. Court of Appeals
for the Second Circuit
United States v. Robert L. Schulz, et al.
Docket 07-3729-cv

February 4, 2008

SCHULZ: If it please the Court, my name is Robert Schulz. I am one of the Appellants. First, there's an error in my reply brief. Just to mention, on Page 4 the sixth line down from the top should have read...let me get my glasses out ...and thus, 6700 and 6701 are being used by the government to further illegitimate ends ...It says legitimate ends by mistake. Also, another matter, this morning I filed a motion, suggesting that it be sent to the court right away because of the oral argument today. Last Friday...the three appellants in this case are the lead plaintiffs in a somewhat related case known as We The People v. United States ...

JUDGE NEWMAN: Yeah, we have your motion.

SCHULZ: Okay, and the Petition for Rehearing was part of that motion. It was filed Friday and delivered to the Court this morning. The historical context and purpose of the right to petition, the last ten words of the First Amendment, are important to this case. No court has ever declared what these rights of a private individual to petition the government for constitutional torts.

No courts ever declared what these rights of the private individual are or what the obligations of the Government are.

JUDGE SOTOMAYOR: You have any number of the people who have given you advice convicted of failure to pay their taxes, correct?

SCHULZ: I am aware of those cases, yes.

JUDGE SOTOMAYOR: And you are aware of many courts who have rejected your argument with respect to the tax issue, aren't you?

SCHULZ: That's not true, your honor.

JUDGE SOTOMAYOR: What court has supported your position that taxes are not due to the government or that you have a constitutional right not to pay taxes?

SCHULZ: Your honor that's not the issue in these proceedings. It's not the issue .....

JUDGE SOTOMAYOR: So even though you know, even though you know, that every court has taken a contrary position to your own you were entitled to make up forms and to advocate

others, to give them forms to assist them in not paying their taxes.

SCHULZ: No your honor, there's a severe misunderstanding here. The material that is at issue in this case, known as the blue folder, those documents are, of course, in the record. This (holding up a copy of the blue folder) is a petition that I submitted to the Executive and Legislative branches on March 15th of 2003. No question here, no issue here, no statement here has ever been answered. I am not in the habit of asking questions that have been answered by the government. We petitioned the government. We submitted this and we asked them, "Is there anything in here that is false or misleading. Please let us know because I intend to go across the country and hand out for free copies of this speech. There was no response. I then got into my automobile and scheduled 37 meetings across the country in 37 days and handed out, this is all in the record, handed out 3500 copies of this document never receiving a fee – for free. What does this document say to workers – "Give this to your employer, ask your employer to give it to the company's tax professionals ... CPAs, attorneys, accountants...

JUDGE NEWMAN: Do you make money doing what you are doing?

SCHULZ: No.

JUDGE NEWMAN: You make no money at all?

SCHULZ: For 29 years,,,,

JUDGE NEWMAN: Do you make any...

SCHULZ: The answer is "No." I make no money. I take nothing from the work I've done for 29 years your honor. I...

JUDGE NEWMAN: Do you have any money coming in to you from any source?

SCHULZ: When I need money...

JUDGE NEWMAN: Do you have any money coming to you from any source? Very simple question.

SCHULZ: Yes occasionally I sell some of my land to keep my house....

JUDGE NEWMAN: Do you pay taxes on that?

SCHULZ: Yes, when I sell a piece of land I send 5 percent, on the advice of my accountant, I send 5 percent of the selling price to the federal government and 5 percent to the state government because that is ....

JUDGE NEWMAN: Have you filed for refunds when you weren't entitled to them?

SCHULZ: No.

JUDGE NEWMAN: Never have?

SCHULZ: No, never have. This is not about what...

JUDGE NEWMAN: Why do you urge everyone else not to pay taxes when ...

SCHULZ: I have never done that.

JUDGE NEWMAN: Oh, you don't do that?

SCHULZ: I've never done that.

JUDGE NEWMAN: No?

SCHULZ: Never have. This is about this folder. I.. if there's incitement ... this is not ... this is pure political speech. It's not commercial. I've never received anything. It's not false. There is nothing in here that has ever been denied by any academician, any government agency. There are questions in here that have never been...

JUDGE NEWMAN: Your not telling employers they don't have to withhold?

SCHULZ: No I'm not doing that.

JUDGE NEWMAN: Well, why are you running around the country then if everyone is supposed to pay their taxes?

SCHULZ: They are issues related to withholding, not tax filings or tax payments, but withholding.

JUDGE NEWMAN: Do you urge people not to withhold?

SCHULZ: I do not. I urge people to take this...I'm sorry your honor, I urge people to give this to their companies, have their companies give it to their tax professionals to check its accuracy. It may lead to a voluntary termination of a W-4 between the worker and a company and this ....

JUDGE NEWMAN: Do you tell people the 16th Amendment isn't valid?

SCHULZ: I do not.

JUDGE NEWMAN: You don't do that either?

SCHULZ: I do not. And that's not in here. That's a mistake on the part of ... Its an error on the part of the government to say that these forms, your honor mentions...They don't mention the 16th Amendment. Now, there are issues, there are 109 questions in this blue folder There are 56 pages out of a Statement of facts and beliefs that came out of a citizens truth in taxation hearing in February of 2002. There was a hunger fast and the government had agreed to meet with us to address these questions and answer them, address the issues and answer the

questions. After 9/11 they decided not to do that. We went ahead anyway and put under oath constitutional attorneys, tax accountants, former IRS agents and so forth and we had a hearing. It cost a lot of money, we rented the Washington Marriott and for two days we had these people under oath to answer the questions that the government refused to answer and 109 of those questions, in detail, address the sixteenth amendment, the ratification process of the sixteenth amendment. My interest in the ratification process of the sixteenth amendment has to do with clear, for the record, violations of state constitutions. For instance, in New York, the people ...

JUDGE NEWMAN: It's very simple, are you telling the people the Sixteen Amendment isn't valid?

SCHULZ: I am not.

JUDGE NEWMAN: You are not?

SCHULZ: I am not.

JUDGE NEWMAN: Are you telling people they need to pay their taxes?

SCHULZ: I don't tell...I don't give that advice.

JUDGE NEWMAN: You don't? These forms that are supposed to go to the workers, are they telling them you don't have to withhold, you don't have to have your employer withhold?

SCHULZ: They cite... these forms that we ask the workers to give to their company to give to their professionals so that we can get a whole lot of the nation's tax professionals...

JUDGE NEWMAN: To what end? So that there won't be any withholding? Is that your objective?

SCHULZ: No, the truth is the objective, your

Honor.

JUDGE NEWMAN: Very simple, do you think the employer should withhold or should not?

SCHULZ: I think they should follow the law.

JUDGE NEWMAN: And does the law require withholding?

SCHULZ: I don't know. That's the purpose of .....

JUDGE NEWMAN: Oh, you don't know. I see.

SCHULZ: That's the purpose of these questions your honor.

JUDGE NEWMAN: I see.

SCHULZ: Your honor, we simply are trying to get the government to answer questions. They refuse to respond to the petitions of redress of grievances.

JUDGE SOTOMAYOR: Doesn't the Blue Folder under statement of facts and beliefs that state, unequivocally, that the income tax is a tax on labor prohibited by the Thirteenth amendment. Does it say that or does it not?

SCHULZ: The Statement of Facts and Beliefs, are not my statement, but the statement of the people who were under oath to answer the

questions in the truth in taxation hearing. This is their beliefs. That's what this is. This, we say...

JUDGE SOTOMAYOR: Have any of these people been convicted for not paying their taxes, correct?

SCHULZ: No, that's not true. Larry Becraft is a constitutional attorney who answered most of those questions. A former agent has not....Joe Banister, a special agent, in the criminal investigation....

JUDGE SOTOMAYOR: Some of those people been convicted?

SCHULZ: The answers to those questions during this hearing, yes.

JUDGE SOTOMAYOR: And where in this blue folder is that information contained?

SCHULZ: Any conviction came after this folder was distributed. Your honor, there's a difference here. This Statement of Facts and Beliefs is not a part of what we have asked the people to give to their employers. These are the forms that you referenced there. They cite Supreme Court decisions. They cite statutes and regulations and so forth, and repeatedly at oral argument on the

motion for preliminary ruling, the Department of Justice attorneys admitted that throughout this document there are these disclaimers. There was no imminent incitement to break a law. If there was incitement we were inciting workers to give this to their companies to in turn give it their tax professionals because we wanted a lot of tax professionals to be looking at this because the government refused to answer the questions ...

JUDGE SOTOMAYOR: Mr. Schulz, you have now gone over.

SCHULZ: Fine, thank you.

CATTERALL: May it please the court, my name is Arthur Catterall of the Justice Department; and I represent the United States in this matter. I think the record fairly well speaks for itself. Simply put, there is not error in the District Court's opinion. The judge very carefully went through the required elements needed to establish violation of section 6700 of the internal revenue code, and very carefully analyzed the factors to be considered in determining whether an injunction is necessary to prevent a recurrence.

JUDGE SOTOMAYOR: Why is, well, first, where in your brief below did you explain the need for the

disclosure of the names of individuals to whom this blue folder has been given?

CATTERALL: In the brief below?

JUDGE SOTOMAYOR: Yes.

CATTERALL: I did not prepare the brief below. So I cannot directly answer where that would appear. I can attempt to answer, from the appellee's point of view.

JUDGE SOTOMAYOR: Well, you can't make up facts that are not there. Except that I don't see the argument below. Assuming that I am correct, how can we sustain that part of the injunction that the District Court issued directing the disclosure of those names?

CATTERALL: Oh, because...I think...and again...I don't know exactly what's in the record. My understanding was the need to get the names of the people who received these material is, in part, to be able to contact them to find people who have been taken in by this plan and, uh, alert them, look you need to file your returns, pay your taxes, withhold from your employees or there is going to be...

JUDGE SOTOMAYOR: The blue folder tells them to get tax advice before they do anything.

CATTERALL: We, in District Court found that there was no disclaimer at all. It goes against itself, it says ...these are pure educational materials, get somebody to review them, but you can use these to exercise your constitutional rights to withhold taxes until the government answers our petitions for redress. So I think that the District Court's feeling that this was not a disclaimer at all.

JUDGE SOTOMAYOR: I am not sure I understand why. If *Reed* says that you can, consistent with the First Amendment, encourage people to break the law, why is this different? How is this different?

CATTERALL: Well, if someone crosses the line from advocacy to action.

JUDGE SOTOMAYOR: That's exactly the line I am trying out how it was crossed....

CATTERALL: It was crossed because the defendants prepared the forms to be used to thwart the withholding system, encouraged people to use these forms to submit them to their employers or if they were employers, to use these forms. This just goes beyond...

JUDGE SOTOMAYOR: But I am not sure. If the forms are a statement of belief, which is what they appear to be, how do they thwart anyone?

CATTERALL: Well they mislead people into believing that withholding is voluntary, and its simply isn't, and whether this is, you know, an honestly held belief, it's not a reasonably held belief...

JUDGE WINTER BY PHONE HOOKUP:
(Unintelligible, but sounds like, "Even if they persuade workers, the employee has the belief. That doesn't stop the withholding.")

CATTERALL: Right, they encourage the employee to give these forms to their employers. It's a little less benign than the defendants would have you believe because they have forms for...the forms contain very threatening arguments to the employer, you know, if you do not stop withholding from our wages I'm going to file all sorts of actions against you, I'm going to sue you. It's not a benign exercise.

JUDGE WINTER BY PHONE HOOKUP:
(Unintelligible)

CATTERALL: Well I know there have been cases where employers have been convicted for not withholding from the employee's wages, just as defendants have encouraged them not to, and ...

JUDGE WINTER BY PHONE HOOKUP:
(Unintelligible)

CATTERALL: Well we do know that approximately 1000 of Mr. Schulz' followers who signed onto the petition in the *We The People* case in the DC Circuit signed affidavits saying they are no longer filing returns and are not paying their taxes until their petition for redress is answered. So that is certainly in the record. And, Mr. Schulz, himself, his web postings, refers to various instances where people are heeding his advice and going, you know, en mass to their employers saying, you know, stop withholding or we are going to, you know, bring all sorts of ... trouble for you.

JUDGE NEWMAN: Do you know whether he files returns?

CATTERALL: Just from what I get from the record I understand that he does, and the position is that he does not have any income.

JUDGE NEWMAN: Has the IRS looked into that?

CATTERALL: I believe the IRS is currently looking into that. In separate litigation, uh, involving the PayPal system on the Internet and, you know, trying to track down whether... I can tell you this that since 1999 over 2 million has been taken in by the foundation, the We The People Foundation, and I think the IRS is trying to make sure that none of that two million dollars is finding its way into Mr. Schulz' hands.

JUDGE NEWMAN: So the possibility of a prosecution is still alive?

CATTERALL: I imagine so. I am not aware of ...

JUDGE NEWMAN: Well you've got a tax protest movement all over the country. Right?

CATTERALL: Right.

JUDGE NEWMAN: And occasionally you bring a criminal case?

CATTERALL: Right.

JUDGE NEWMAN: And other times its just civil?

CATTERALL: Right.

JUDGE NEWMAN: I don't understand why if the government is very concerned about a wide spread protest movement that is consuming an awful lot of time and an awful lot of courts they don't go as aggressively as the law permits.

CATTERALL: And, uh, again, I've been going through the file and, you know, I don't know if this is in the record, but just to answer your question, I know that when the US department of justice started pursuing this civil action the U.S. attorneys office said that we strongly feel that you all need to prosecute this person criminally. I don't know why that advice is not heeded.

JUDGE NEWMAN: You don't?

CATTERALL: No I do not.

JUDGE NEWMAN: Seems an odd position for the leadership of a department that is anxious to have taxes paid.

CATTERALL: Odd position not to pursue criminal?

JUDGE NEWMAN: Yes.

CATTERALL: I do not disagree with you.

JUDGE NEWMAN: You are from the department?

CATTERALL: Of Justice.

JUDGE NEWMAN: And you don't know why there is a reluctance to prosecute?

CATTERALL: No, I do not.

JUDGE NEWMAN: Have you asked anyone?

CATTERALL: No I haven't.

JUDGE NEWMAN: Aren't you curious?

CATTERALL: I am curious, yes.

JUDGE NEWMAN: So am I.

CATTERALL: I don't hold a policy position and so...the lines ... (unintelligible) ...cases...(unintelligible)... point well taken. I would just like to say , as far as the First Amendment concerns, the District Court...

JUDGE SOTOMAYOR: You are well over your time, so lets wrap this...

CATTERALL: The district court assumed that this was not commercial speech. It gave the analysis as though it was political speech and correctly concluded that because the defendants are aiding and abetting violations of the tax laws, there is no First Amendment protection.

JUDGE SOTOMAYOR: Thank you counsel. Mr. Schulz.

SCHULZ: With respect to the comment about two million dollars, the IRS has audited the Foundation. We provided everything. There is a clean bill of health. There is no money coming to me from the Foundation. We had run full page USA ads, NY Times ad, conferences, two CSPAN covered conferences at the National Press Club, this citizens truth in taxation hearing. We are trying to educate people. We are trying to get information out on these issues. Yes, the IRS have been investigating me. In 2003 they issued a summon on my personal books and records. I brought an action which this court eventually heard and in Schulz I and II, as they are referred to, this court said that I am entitled to a full adversarial proceeding and a hearing, and if the IRS wanted to pursue the matter they had to bring me to court and I would be entitled to a hearing. What they did instead, instead of responding to what this court recommend they do, they issued a third party summons on my bank in Glens Falls and in this IRS agent's declaration under the U.S. v Powell criteria, the agent said one of the reasons we need Mr. Schulz's records from the Glens Falls National Bank is because we have evidence that there is an online payment fulfillment system on PayPal and money is transferred from PayPal to my bank and to my account and to accounts in my control. I responded to that and said I want this agent sanctioned. This is a fabrication. The agency knows not only from the audit of the Foundation but it also knows from third party summonses that it issued to PayPal and got all the records, that no nickel ever went from PayPal to my bank. I have never had an account,

except a personal account, at that bank. The case before the Northern District about the Bank summons is 06- MC- 131. With respect to ...

JUDGE SOTOMAYOR: Mr. Schulz, now we are off the .....

SCHULZ: With respect to the thousand followers in this other case that Mr. Cameron referred to, we petitioned with the assistance of constitutional scholars to try to get a reconciliation between the Iraq Resolution and the War Powers Clauses. There are four petitions. Between the US Patriot Act and the Privacy Clauses. Between the money clauses of the constitution and the Federal Reserve and a reconciliation between the direct un-apportioned tax on labor and the taxing clauses. No response came from the government to any of those four petitions for redress. We then went to the DC District Court to test its attitude and to get a declaration of our rights on the case, and in support of that case, there were 1450 named plaintiffs in that case, they all, almost all of them, signed an affidavit saying we have petitioned, the government has refused to respond, therefore, we are taking the advice of the founders, who in 1774, sitting as the Continental Congress, not an irrelevant Congress, that's the one that adopted the Declaration of Independence ...

JUDGE SOTOMAYOR: Mr. Schulz now I'm going to end this. We will reserve decision.